Office - Supreme Court, U.S.
FILED
MAY 16 1983
ALEXANDER L. STEVAS,
CLERK

Nos. 82-585 and 82-586

In The

# Supreme Court of the United States

October Term, 1982

ALOHA AIRLINES, INC.,
*Appellant,*

vs.

DIRECTOR OF TAXATION, STATE OF HAWAII,
*Appellee.*

HAWAIIAN AIRLINES, INC.,
*Appellant,*

vs.

DIRECTOR OF TAXATION OF THE STATE OF HAWAII,
*Appellee.*

**ON APPEAL FROM THE SUPREME COURT OF THE STATE OF HAWAII**

## LEGISLATIVE HISTORY APPENDIX TO THE BRIEF FOR THE APPELLEE, DIRECTOR OF TAXATION, STATE OF HAWAII

KEVIN T. WAKAYAMA
(Counsel of Record)

WILLIAM D. DEXTER

345 Queen St., No. 800
Honolulu, HI 96813
(808) 531-6277

*Attorneys for Appellee Director of Taxation, State of Hawaii*

COCKLE PRINTING CO., 2111 Douglas St., Omaha 68102

# TABLE OF CONTENTS


| | | Page |
|---|---|---|
| 1. | Introduction—Overview | 1 |
| | **1972** | |
| 2. | 118 Cong. Rec. 17,468-69 (May 16, 1972) | 3 |
| 3. | Senate Hearings (Apr. 25 & 26; June 12, 1972)[1] | 6 |
| 4. | House Hearings (June 19 & 23, 1972)[2] | 34 |
| 5. | 118 Cong. Rec. 22,598-99 (June 27, 1972) | 58 |
| 6. | Senate Bill Report (Aug. 1, 1972)[3] | 62 |
| 7. | House Bill Report (Aug. 2, 1972)[4] | 66 |
| 8. | 118 Cong. Rec. 27,812-29 (Aug. 10, 1972) | 73 |
| 9. | 118 Cong. Rec. 29,152-56 (Aug. 18, 1972) | 87 |
| 10. | 118 Cong. Rec. 30,116-17 (Sept. 11, 1972) | 91 |
| 11. | 118 Cong. Rec. 30,511 (Sept. 13, 1972) | 92 |
| 12. | Conference Report (Oct. 5, 1972)[5] | 93 |


---

[1]Bills to Amend the Airport and Airway Development Act of 1970: Hearings on S. 2397, S. 3302, S. 3611, and S. 3755 Before the Subcomm. on Aviation of the Senate Comm. on Commerce, 92d Cong., 2d Sess. (Apr. 25 & 26, June 12, 1972).

[2]Bills Concerning State Taxation and the Federal Share of Funds to be Used for Airport Construction, Maintenance, and Improvements: Hearings on H.R. 2337, H.R. 14847, and H.R. 10326 (and identical bills) Before the Subcomm. on Transportation and Aeronautics of the House Comm. on Interstate and Foreign Commerce, 92d Cong., 2d Sess. (June 19 & 23, 1972).

[3]S. Rep. No. 92-1005, 92d Cong., 2d Sess. (Aug. 1, 1972).

[4]H. R. Rep. No. 92-1279, 92d Cong., 2d Sess. (Aug. 2, 1972).

[5]H.R. Conference Rep. No. 92-1543, 92d Cong., 2d Sess. (Oct. 5, 1972).

TABLE OF CONTENTS—Continued

Page

13. 118 Cong. Rec. 35,116 (Oct. 11, 1972) ..... 96
14. 118 Cong. Rec. 35,860 (Oct. 13, 1972 ..... 96
15. 118 Cong. Rec. 37,202-03 (Oct. 18, 1972) ..... 101

**1973**

16. 119 Cong. Rec. 213-16 (Jan. 4, 1973) ..... 101
17. Senate Bill Report (Feb. 1, 1973)[6] ..... 108
18. 119 Cong. Rec. 3,196-97 (Feb. 2, 1973) ..... 123
19. 119 Cong. Rec. 3,348-61 (Feb. 5, 1973) ..... 123
20. 119 Cong. Rec. 3,928 (Feb. 8, 1973) ..... 131
21. House Hearings (March 14, 15, 20, 22 & 27, 1973)[7] .. 132
22. House Bill Report (Apr. 19, 1973)[8] ..... 158
23. 119 Cong. Rec. 13,896-13,911 (May 2, 1973) ..... 166
24. 119 Cong. Rec. 14,662-63 (May 8, 1973) ..... 178
25. Conference Report (May 24, 1973)[9] ..... 179
26. 119 Cong. Rec. 16,891-93 (May 24, 1973) ..... 184
27. 119 Cong. Rec. 17,344 (May 30, 1973) ..... 185
28. 119 Cong. Rec. 18,045 (June 5, 1973) ..... 187

---

[6]S. Rep. No. 93-12, 93rd Cong., 1st Sess. (Feb. 1, 1973).

[7]Bills to Amend the Airport and Airway Development Act of 1970: Hearings on H.R. 4082, H.R. 2695, H.R. 4213, H.R. 4214, H.R. 4182, and S. 38 Before the Subcomm. on Transportation and Aeronautics of the House Comm. on Interstate and Foreign Commerce, 93rd Cong., 1st Sess. (Mar. 14, 15, 20, 22, & 27, 1973).

[8]H.R. Rep. No. 93-157, 93rd Cong., 1st Sess. (Apr. 19, 1973).

[9]H.R. Conference Rep. No. 93-225, 93rd Cong., 1st Sess. (May 24, 1973).

Nos. 82-585 and 82-586

In The

# Supreme Court of the United States

October Term, 1982

ALOHA AIRLINES, INC.,
*Appellant,*

vs.

DIRECTOR OF TAXATION, STATE OF HAWAII,
*Appellee.*

HAWAIIAN AIRLINES, INC.,
*Appellant,*

vs.

DIRECTOR OF TAXATION OF THE STATE OF HAWAII,
*Appellee.*

**ON APPEAL FROM THE SUPREME COURT OF THE STATE OF HAWAII**

## LEGISLATIVE HISTORY APPENDIX TO THE BRIEF FOR THE APPELLEE, DIRECTOR OF TAXATION, STATE OF HAWAII

### INTRODUCTION — OVERVIEW

The purpose of this appendix is to facilitate review of the legislative history to 49 U. S. C. 1513. As illustrated in the Table of Contents, lengthy excerpts from the conference reports, the bill reports, the Congressional Record, and the hearings appear in chronological order in this appendix. Only the major portions of each document that discuss limitations on the state powers to tax are reproduced.

The following bill numbers and dates are relevant:

House of Representatives

| | |
|---|---|
| H.R. 2337 | (Introduced Jan. 26, 1971) |
| Apr. 19, 1972 | (*Evansville* decided) |
| H.R. 14847 | (Introduced May 9, 1972) (vetoed by Nixon in 1972) |
| H.R. 14991 | (Introduced May 16, 1972) |
| H.R. 627 | (Introduced Jan. 3, 1973) |
| H.R. 2695 | (Introduced Jan. 23, 1973) |
| H.R. 4082 | (Introduced Feb. 7, 1973) |
| H.R. 4182 | (Introduced Feb. 8, 1973) |
| H.R. 4213 | (Introduced Feb. 8, 1973) |
| H.R. 4214 | (Introduced Feb. 8, 1973) |
| H.R. 6388 | (Introduced Mar. 29, 1973) (S. 38 passed by House in lieu of H.R. 6388 on May 2, 1973) |

Senate

| | |
|---|---|
| Apr. 19, 1972 | (*Evansville* decided) |
| S. 3611 | (May 16, 1972) |
| S. 3755 | (June 27, 1972) (vetoed by Nixon in 1972) |
| S. 38 | (Introduced Jan. 4, 1973) (passed by Senate on Feb. 5, 1973) |

## APPENDIX

### 118 CONG. REC. 17,468-69 (MAY 16, 1972)

By Mr. CANNON (for himself, Mr. Magnuson, Mr. Pearson and Mr. Cook):

S. 3611. A bill to amend the Federal Aviation Act of 1958 to prohibit State taxation of the carriage of persons in air transportation. Referred to the Committee on Commerce.

Mr. CANNON, Mr. President, I am today introducing legislation which is designed to prohibit a new, inequitable, and potentially chaotic burden of taxation on the nearly 200 million air travelers in this country. The legislation would prohibit the levying of State or local head taxes, fees, or charges either on passengers or on the carriage of such passengers in interstate commerce. The bill is in response to a situation which has been brought about by a recent Supreme Court decision, upholding passenger head taxes enacted by New Hampshire and by Evansville, Ind., for "aviation-related purposes." While this decision has invited State and local governments to enact head taxes or fees on air travelers, the Court decision does not provide adequate safeguards to prevent undue or discriminatory taxation.

In the wake of this decision, a rash of proposals varying widely in rate, scope, and applicability, has broken out throughout the Nation. It is significant that revenues from some of these head taxes would not be used to provide funds for airport construction or operation, but would be used to nourish general fund coffers. For example, in Philadelphia, a proposed city ordinance will be considered tomorrow, which would levy a tax of $2 per passenger on passengers both arriving in and departing from that city. The revenues would accrue to the city's general fund not the Philadelphia airport. Other cities as well have leveled their sights at air travelers who are convenient, vulnerable, and captive targets. Certainly, we can anticipate the proliferation of such action.

Mr. President, Congress must act to protect the American air travel consumer from such discriminatory taxation, in observance of an old axiom that "In levying taxes and in shearing sheep, it is well to stop when you get down to the skin." The Nation's air travelers are already being heavily taxed to pay for airport facilities and airways modernization. In 1970, Congress passed the Airport and Airways Development Act, creating an Aviation Trust Fund, financed by user taxes to up-grade the Nation's airports and airways. Every passenger in air transportation pays an 8-percent excise tax on the price of his ticket to support these developments. Total user tax revenues will reach about $693 million this year. Since this tax money is earmarked for airport and airway improvements, there is no need to add an additional burden of taxation on these travelers, and in fact, it would be a breach of faith for Congress to stand idly by while this is done by other units of government.

Mr. President, at the present time the average value of a round trip airline ticket in the United States is about $85. Therefore, the average traveler today pays a Federal tax of $6.80, the revenues from which are reserved for aviation facilities development. In 1970, while the Committee on Commerce and the Committee on Finance were considering this legislation, it was our firm intent that the Federal excise tax be the only tax on passengers in air transportation. While the Supreme Court has said that Congress did not preempt this field in 1970, it was certainly our intention, in my opinion, to do so. At that time several States and local governments had attempted to levy head taxes on passengers in air transportation and it was widely assumed because of lower court decisions and qualified legal opinion that such taxes were unconstitutional as as undue burden on interstate commerce.

Despite the views we heard in 1969 and 1970 and despite the fact that the Federal Government presently taxes passengers at the rate of 8 percent on airline tickets, the High Court has opened the door wide to multiple passenger taxation.

Something must be done, and it is fitting that the Nations air travelers look to us for decisive action for this. In its decision, the Supreme Court seemed to invite congressional action for the Court pointed out that:

At least until Congress chooses to enact a nationwide rule, the power will not be denied to the States.

The legislation introduced today, provides the vehicle for Congress to make it clear that it will not allow indiscriminate levying of burdensome head taxes on citizens traveling in interstate commerce. Nor will we allow the growth of our national air transportation system to be impeded by abandoning it to the chaos of discriminatory taxation on air travelers.

I am acutely aware of the financial anemia many units of local government face today. No doubt, some would want to rely on local head taxes to provide matching funds for airport development. The Senate Aviation Subcommittee is currently considering reshaping the Federal airport grant program by raising the Federal ratio of funding to 75 percent. This would ease the fiscal pressure on local units of government and make local airport financing easier. Nonetheless, the national air transport system is too vital and important a national asset to be burdened by willy-nilly, discriminatory State and local taxes.

Mr. President, timely action on this legislation is essential, in order to forestall potential chaos in air transportation.

# AMEND THE AIRPORT AND AIRWAY DEVELOPMENT ACT OF 1970 AND THE FEDERAL AVIATION ACT OF 1958

---

HEARINGS
before the
SUBCOMMITTEE ON AVIATION
of the
COMMITTEE ON COMMERCE
UNITED STATES SENATE
Ninety-Second Congress

Second Session
on

S. 2397

To Amend the Airport and Airway Development Act of 1970 in Order to Provide That the Federal Share Shall Not Exceed 75 per centum of Allowable Project Costs Except with Respect to Landing Aids

S. 3302

To Amend the Airport and Airway Development Act of 1970 in Order to Make Certain Airports Where the Landing Area Is Owned by the United States or an Agency Thereof Eligible for Assistance under Such Act

S. 3611

To Amend the Federal Aviation Act of 1958 to Prohibit State Taxation of the Carriage of Persons in Air Transportation

S. 3755

To Amend the Airport and Airway Development Act of 1970 to Increase the United States Share of Allowable Project Costs under Such Act; to Amend the Federal Aviation Act of 1958 to Prohibit Certain State Taxation of Persons in Air Transportation, and for Other Purposes

---

April 25, 26, and June 12, 1972

Serial No. 92-67

# [p. 129] AMEND THE AIRPORT AND AIRWAY DEVELOPMENT ACT OF 1970 AND THE FEDERAL AVIATION ACT OF 1958

Monday, June 12, 1972

U.S. Senate,
Committee on Commerce,
Subcommittee on Aviation,
*Washington, D.C.*

The subcommittee met at 10 a. m. in room 5110, New Senate Office Building, Hon. Howard W. Cannon (chairman of the subcommittee) presiding.

Present: Senators Cannon, Spong, Pearson, and Stevens.

## OPENING STATEMENT BY SENATOR CANNON

Senator Cannon. The hearings will come to order.

Senator Cotton had intended to be with us this morning but he is en route from New Hampshire. Therefore, he will have permission to insert in the hearing record an opening statement along with a letter received from Senator Aiken, as well. At a later time we may receive a letter from the New Hampshire State attorney general or an expression of his position from Mr. Nammack, who is scheduled to testify, and the committee will supply written questions to the DOT from Senator Cotton to answer in writing.

Today's hearing is on S. 3611, legislation which I recently introduced on behalf of myself and Senator Magnuson, Pearson, and Cook. Quite simply, S. 3611 prohib-

its State and local governments from levying taxes, use fees, or other charges on passengers in air transportation.

The bill was introduced in response to a recent decision by the U. S. Supreme Court which upheld passenger head taxes enacted by New Hampshire and by the city of Evansville, Ind., for "aviation related purposes." In the wake of this decision, a rash of proposals, varying widely in rate, scope, and applicability, has broken out throughout the Nation. It is significant that revenues from some of these head taxes would not be used to provide funds for airport construction or operation, but would be used to nourish general fund coffers. Certainly, we can anticipate the proliferation of such action. Recently the cities of Saginaw, Mich.; Mobile, Ala.; and Sarasota, Fla., have enacted head taxes on passengers in air transportation.

The committee is concerned that such local taxation, enacted at varying levels for varying purposes, will have a chilling effect on the growth and development of air transportation. Wide-scale adoption [p. 130] of head taxes will lead to chaos and confusion in the air travel industry and will add to the already heavy tax burden being shouldered by passengers and shippers who use air transportation. As a result of the Airport and Airway Development Act of 1970, which this committee wrote and developed, aviation user taxes now total more than $600 million per year. These taxes are to be used strictly for aviation related development and are required to purchase and upgrade new and existing air transportation facilities in the United States.

Some of the State and local taxes which we have seen enacted very recently do not produce revenue to be used for aviation facilities development. Ironically, in 1969 the city of Philadelphia testified before this committee that as a result of its highly profitable operations the airport returned several millions of dollars per year profit to the city to finance other city programs. And yet it is the city of Philadelphia which is leading the way with the

most onerous and discriminatory head taxation which we have yet seen. In Philadelphia the enplaning passenger is now charged $2 to leave the City of Brotherly Love and, as if that were not enough, the city is also authorized to collect $2 from arriving passengers. In my view, such bold and discriminatory taxation cannot be permitted to hamper our air transport system.

I am well aware of the financial crisis facing many if not most of our metropolitan governments. No doubt many of these governments see the passenger head tax as an easy method for raising revenues from captive passengers using the air transport system.

Presently the committee is considering legislation to expand Federal assistance to local governments for airport development by amending the 1970 act. Senator Cook and I are strongly committed to providing more financial assistance, particularly to those smaller airports which are never operated profitably or even at a break-even point. In April, hearings were held on S. 2397 sponsored by Senator Cook and action will be taken on that legislation shortly.

During those hearings we had considerable discussion of the Supreme Court's head tax decision. Today's hearing is intended to provide an opportunity for all interested parties to this controversy to present to the committee their views as to whether the Federal Government is to prohibit local taxation of airline passengers. We will hear 13 witnesses who will speak to the merits of the legislation before us. In the interest of hearing all witnesses today we have asked each witness to confine his oral testimony to 10 minutes, and if the need be to submit more detailed written comments for the record. We will appreciate the cooperation of our witnesses in keeping to our time schedule.

. . . .

[p. 134] 92d Congress,
2d Session

S. 3611

---

IN THE SENATE OF THE UNITED STATES

May 16, 1972

Mr. Cannon (for himself, Mr. Cook, Mr. Magnuson, and Mr. Pearson) introduced the following bill; which was read twice and referred to the Committee on Commerce

---

A BILL

To amend the Federal Aviation Act of 1958 to prohibit State taxation of the carriage of persons in air transportation.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That title XI of the Federal Aviation Act of 1958 is amended by adding at the end thereof the following new section:

"State Taxation

"Sec. 1113. No State (or any political subdivision thereof) shall levy or collect a tax, fee, or other charge, directly or indirectly, on the carriage of persons in air transportation."

Sec. 2. That portion of the table of contents contained in the first section of such Act which appears under the head [p. 135] ing "Title XI—Miscellaneous" is amended by adding at the end thereof

"Sec. 1113. State Taxation."

. . . .

[p. 136] . . . .

## STATEMENT OF WHITNEY GILLILLAND, VICE CHAIRMAN, CIVIL AERONAUTICS BOARD

Mr. Gillilland. Good morning.

Mr. Chairman, members of the committee, the Civil Aeronautics Board appreciates the opportunity of presenting its views on S. 3611. This bill would prohibit the States from taxing the carriage of persons in air transportation.

The Supreme Court's decision last April in the *Evansville* case has opened the way for the imposition of local taxes directly on airline passengers. Surely it will not be long before passengers will be paying an extra dollar or so and maybe more at each airport they visit—unless the Congress acts otherwise. Philadelphia has announced a plan to collect $2 from the passenger when he gets on the airplane, and $2 when he gets off. Richmond has imposed a $1 tax on enplaning pas- [p. 137] sengers effective July 1. Mobile, Ala. is already collecting a departure tax. Saginaw, Mich. and Sarasota, Fla. have enacted such taxes.

Moreover, it appears that head taxes can be constitutionally imposed which would double penalize those passengers in our smaller cities who must use connecting air service to reach their destination. Such passengers might have to pay the tax each time they enplane, forcing double or treble taxes while their big city cousins would pay only once.

In addition to these haphazard and unequal effects on passengers, these new taxes undoubtedly will impose an expensive new administrative and procedural burden on the air carriers. Ultimately, passengers will pay for this burden as well.

For example, United Air Lines serves 88 cities in the United States and in 1971 it carried 26,048,000 passengers. If only three-fourths of its cities adopted a head tax, United would be forced to collect a head tax from almost 20 million passengers, accumulate the amount, and remit to 66 cities. This means that UAL's staffing on its ticket counters and/or at its boarding gates will have to increase and

so will the number of employees in its accounting department. Its added out of pocket cost could approach $2 million per year.

Moreover, if the tax is imposed in such a way as to require the carriers to collect either enplaning or deplaning head taxes or both at the point of sale, further expensive complications would arise in the settlement of intercarrier accounts, where the charges are collected by one carrier on behalf of others. If travel agents are requested to collect the taxes when selling tickets, but fail to do so, in all likelihood the unpaid taxes would have to be paid by the carriers. On the other hand, if taxes are collected when they are incurred, other problems arise. The practical administration of deplaning taxes seems exceptionally difficult. For example, suppose a passenger balks at paying $2 when leaving the plane. Is the carrier obligated to carry that passenger to the next stop?

Of course, the passenger is already paying 8 percent of his ticket as a Federal tax to help construct airports and provide improvements in safety. On international flights he pays a $3 Federal emplanement charge. These taxes reflect the user charge philosophy which is at the heart of the Airport and Airway Development Act of 1970.

Moreover, a portion of the ticket price covers the cost of airport facility rental charges. State and local taxes of various kinds, and landing fees at airports. Incidentally, the landing fees imposed on the Nation's airlines rose from $45.5 million in 1965 to $125.6 million in 1970, and the trend is continuing up. The Board is quite concerned about this trend, and its implications for fares.

In some cases, the increased taxes on airlines are not going to airport development at all. The Supreme Court is being asked to review an Ohio tax on the gross receipts of airline business done in Ohio. The revenue from this source is earmarked under Ohio law to pay the deficit in the policeman's and fireman's disability and pension fund. We understand that the Philadelphia tax was imposed as a general revenue measure.

Head taxes are ultimately justifiable under the Supreme Court's decision as a form of user charge. As we have seen, the user charge [p. 138] philosophy already causes the airline passenger to pay a good deal. Now, is it fair to put all the costs of building and running airports on the passenger?

Certainly, as a user the passenger should pay for a fair share of the benefits. But let us not lose sight of the fact that an airport benefits a lot more people than just passengers. It is not hard to imagine, for example, the economic catastrophe which would overtake Los Angeles, if Los Angeles International were shut down. The fact is, the whole community gains enormously from having an airport. Because of this, it is entirely proper, in the Board's judgment, for the whole community, through general taxes, to pay a fair share of the cost of having the airport.

Airport financing is complex. The "fair share" is hard to fix. Limiting State and local governments' power to tax users of airports may have an impact on the Federal share under the Airport Development Act. These problems need to be sorted out. The Board suggests that the Congress consider imposing a moratorium of a year, or year and a half, during which no passenger head tax would be allowed. That could give all interested parties a chance to consider in just what direction this country ought to go in terms of airport financing. In fact, the FAA and the DOT are very capable of studying this in depth, coordinating with the interested groups, and reporting back to Congress.

I might say that I think the CAB could make quite a contribution in that field, too, and I think we ought to because the economic operation of the air transportation system is a matter of which we are required under the statute to concern ourselves.

If the Congress were to do this soon, it would not be taking away from the States revenues they are already enjoying. Very few States or localities now have any head tax on airline passengers, since the conventional wisdom until recently has been that State or local governments

could not constitutionally impose head taxes on airline passengers. But by imposing the moratorium, Congress would be preventing the almost certain mushrooming of another kind of tax that could be extremely difficult to get rid of once the various States and localities adopted it and became dependent upon it.

For these reasons, Mr. Chairman, the Board recommends legislation like S. 3611 but having a duration of a year or 18 months that would prohibit States from adopting taxes that would be collected on a per-passenger basis.

I would add that in its present form, S. 3611 might be construed as prohibiting any form of user charge, such as landing fees. That could lead to some difficult problems if the Federal Government is not prepared to provide sufficient operating funds to replace landing fees. Clarafication of the bill's intent in this respect would be desirable.

Thank you.

Senator Cannon. Thank you, Judge, for your statement. I think the bill needs some clarification with respect to the landing fee situation. I am wondering, though, about the 1 year or 18 months moratorium as you suggest. Might that not lead all the municipalities and airport authorities to feel that at the end of that time they would be free to go ahead and be ready to put taxes into effect a year or 18 months from now?

[p. 139] Mr. Gillilland. I think that danger would be present, but it could be guarded against largely in the committee report in expressing the purposes of the legislation.

Senator Cannon. Of course, if we enacted a flat prohibition at this time, this would not preclude DOT and the Board from going ahead with a study and making a recommendation at some later time. Congress could later act to modify or repeal any legislation we might enact this year.

Mr. Gillilland. This is true. It strikes me, though, that having an expiration date would charge the people

concerned with going forward with adequate and complete studies, expeditiously bringing them along, and perhaps reaching a better resolution of the problem than this bill does.

Certainly, I think something needs to be done and very soon, but there are interrelated problems that might be looked into at the same time. One of them would be these increases in landing fees that are unequal in various airports and do not reflect themselves directly in fares. That is, the fares are not higher to and from a city that has a very high charge for use of its airport than elsewhere, thus, the fees get into carrier costs generally and have to be paid by the traveling public whether using that airport or not, people traveling between distant points over the system.

There are some other things of that sort that go on and it strikes me it might be well to take a look at this whole situation. It might or might not indicate legislation.

Senator Cannon. Well, if Congress made the determination that no moratorium or prohibition against the head tax were advisable, do you think it would be desirable to pass legislation providing guidelines so that at least the State and local governments would be required to follow some uniform policy with respect to any head tax that might be imposed?

Mr. Gillilland. Yes. As of right now, that is the way I look at it. One of the reasons, of course, we are for having the shorter period and compelling the study is exactly that. Local taxes of this sort may not be intrinsically wrong at all, but certainly it seems to me that they should be uniform and evenhanded and not create an unequal burden.

Senator Pearson. Do we know what the municipalities are doing with the money they have secured through this taxation?

Mr. Gillilland. I do not know that we have any information as to what it is actually used for. Some of them earmark it for aviation uses and some do not. This

*Indiana* case, for example. There the authorization seems to be limited, the taxes are to be used for aviation purposes and are not to extend beyond that. But some of these taxes do not make that a requirement. Whether they intend to use the money for aviation purposes, I do not know.

Senator Pearson. Has it only been on passengers for scheduled airlines or commuter airlines? Who is taxed under these ordinances? Is there any general pattern to these ordinances?

Mr. Gillilland. They are still commercial services. I think that is all that have been included up to this point as far as I know. Mr. Johnson states that in New Hampshire the tax is not levied against intrastate passengers.

[p. 140] Senator Pearson. That is all I have. Thank you.

Senator Cannon. It is a fact, is it not, that general aviation passengers so far are not covered by the taxes as presently imposed?

Of course, I can see that the next logical step for an airport authority or operator to, say would be, "We are going to put a gate out there and everybody that goes through the gate has to pay as they go through, whether they are flying on general aviation or whether they are going on a scheduled air carrier."

Mr. Gillilland. Very likely.

Senator Cannon. Thank you very much, Judge. We appreciate you being here.

Senator Pearson. I would just like to say for the record that I have been handed sort of a resume of these head taxes from place to place in New Hampshire, Indiana, Richmond, Philadelphia, and every one different in almost every detail as for qualification and the manner it is collected and the people that are subject to the tax.

Senator Cannon. The only thing common is the form of currency required.

Senator Pearson. That is right.

Senator Cannon. The next witness is Mr. Ronald Pulling, Acting Associate Administrator for Plans, Federal Aviation Administration Department of Transportation.

. . . .

[p. 163] . . . .

STATEMENT OF STUART G. TIPTON, PRESIDENT, AIR TRANSPORT ASSOCIATION OF AMERICA

Mr. Tipton. Mr. Chairman, members of the committee, I am Stuart G. Tipton, president of the Air Transport Association, which represents virtually all of the U. S. scheduled air carriers. At the outset, I would like to introduce on my left Mr. Warren Martin, vice president, public affairs, of the Air Transport Association, who has done much work on head taxes.

In response to the suggestion that the witnesses cut down their statements to 10 minutes, I would like to present my statement for the record, Mr. Chairman.

Senator Cannon. It will be made a part of the record.

Mr. Tipton. I will summarize it and try to stick to the 10-minute rule as closely as I can.

Many of the issues with respect to the proposal before the committee have already been argued and that will permit me to cut down my statement.

I could say at the outset that the scheduled airlines of the United States favor the enactment of S. 3611 because it deals with an issue that we have always thought would be a very difficult and important one and in the past few weeks we have found just how difficult and important that is, as we seek to appear throughout the country to discuss the possibility of head taxes and simultaneously try to develop methods by which we can collect those head taxes if they are ultimately imposed.

The Supreme Court, in passing upon this head tax issue, said it was legal but we must keep constantly in mind that the Supreme Court did not comment upon the wisdom

of having such a widespread series [p. 164] of taxes on individual passengers or measured by individual passengers. As a matter of fact, the Court, in sustaining the right of local communities to enact head taxes, said, "At least until Congress chooses to enact a nationwide rule, the power will not be denied to the States," thus indicating that the wisdom of local head taxes of this sort was left properly to the Congress of the United States and the bill before you properly responds to that invitation.

Let me sketch as briefly as I can the major reasons that we think this bill is good. We think first, and probably most important, the assessment of local head taxes is contrary to the national plan for the financing of the improvement of the airport system throughout the United States. Tax was levied on passengers; tax was levied on airlines, in order to provide a trust fund and a very large trust fund to help sustain the cost of airports in the airport system of the United States. The Congress at that point—at least this committee thought, I am sure, that there was no possibility of financing through head taxes, and so did we, but the Court has changed that and has caused this committee and others to concentrate on the impact of a tax on the national system that they created in the airport/airways bill.

I think that the national system that has been created is sustained completely from the standpoint of national policy since what has been created in the airport transport system is a national system, and its requirements, because of its speed and widespread character, demand national treatment for its problems.

The second major reason is the sheer complication which one encounters in trying to assess head taxes against passengers under the ordinances that have been put forward up to this present time. We have got a good understanding of this complication in Mobile the other day when the first head tax went into effect. There is no point in my describing the scene, but all I can say to this committee is that the passengers were mad. We do not like to have

our passengers mad. We have worked for years and spent thousands upon thousands of man-hours to take seconds off the handling of passengers. When you handle 70 million passengers a year who have paid well for speed, you are bound to do the best you can to cut down the inconvenience of handling tickets and handling other arrangements for air travel, and we have done the best we can. Sometimes we have not done so well, but this adds another one.

We figured in Mobile it was using up 45 seconds to make sure that the passenger owed the tax, collect the tax, give him a receipt, arrange for our accounting for the money collected—45 seconds. That's millions of man-hours that we have worked to cut 45 seconds off that time.

Senator Pearson. [Two pages of Questions and Answers are omitted here].

. . . .

[p. 166] . . . .

Mr. Tipton. . .

Let me make a comment as I conclude on the DOT recommendation. I had not heard that recommendation before and I feel impelled to comment on it because I think it is so thoroughly unwise. What DOT is saying is that the Congress and everyone should wait to see what happens with respect to this head tax problem. Now, one thing I do not think you have to look very far to see what is happening. I have to submit to the committee this morning a list of head taxes enacted and head taxes being considered by both State and local levels all over the country. That is happening. What is more, once it has happened on a very widespread basis, then it will be extremely difficult to [p. 167] pass legislation in the Congress which treats this head tax problem and the financing of airports on a national basis.

It would seem to me that their reasons for advocating that also were unsound. It seemed to be regarded that this was contrary to the revenue-sharing proposals. It is not contrary to the revenue-sharing proposals. The rev-

enue-sharing proposals recognize in many instances the wisdom of utilizing the Federal taxing power, both because of its national impact and because of the availability of extensive tax sources, and then contributing money yielded to the Federal Government to the local communities to help meet their problems. That is as good a description of the Airport/Airways Act as you can make.

Now, there, you have a case where the Congress has set a tax and a heavy tax on passengers for the purpose of returning it to communities where it could be used on the basis of national standards.

Now, there you have a case where the Congress has set a tax and what is attached to my testimony, a summary statement of the adverse effects of head taxes, editorials from Chicago and Richmond newspapers which are examples of very widespread adverse press comment on this from the standpoint of the passengers, a legal opinion on the constitutionality of congressional regulation of the taxation of interstate commerce. If I may have these additional documents put in I would appreciate it.

Senator Cannon. They will be made a part of the record, along with your prepared statement.

Mr. Tipton. I have got to make one final statement. That is, to lay to rest the question about landing fees being prohibited by the existing legislation. I thought, Mr. Chairman, you pretty much laid it to rest, but since I represent those that pay about $150 million in landing fees annually I thought it would be wise for us also to say that this legislation—it was not expected, as I understood it, to block out landing fees, and if amendments are necessary to continue the present landing fee and rental system of financing the airports we would have no objection to it.

Senator Cannon. So your support of the bill is not predicated upon the fact that some might interpret this to prohibit the charge of landing fees?

Mr. Tipton. It would be great, Mr. Chairman, but we——

Senator Cannon. I may say, in reviewing the bill, it appears that in the first part of the bill, section 1113, could be amended by just simply eliminating the words "the carriage of," so that the section would then read, "No State or any political subdivision thereof shall levy or collect a tax, fee or other charge, directly or indirectly, on persons in air transportation." That might get at the problem but this is something that we can give some study to.

Mr. Tipton. May I have permission to put forward a redraft of the legislation which will deal with that problem?

Senator Cannon. We would be delighted to have a suggestion from you.

Now, let me ask you a few questions here. Let's assume that there were no legislation enacted to prohibit the imposition of head taxes. Do you believe, in that event, that Congress should determine a maximum allowable tax?

[p. 168] Mr. Tipton. If the head tax legislation before the committee were not enacted—and we strongly urge that it be enacted for reasons I have stated—I think that there would be value in studying the standardization of any head taxes that are going to be put forward which would lead you right back again to the national system you established originally. As far as maximum levels are concerned, that would be one item of a standardized local head tax that might be considered.

We would, of course, regard that as definitely second-best. I would hope that we can continue the policy that the Congress has adopted up to now of maintaining a national system of taxation on passengers. Let me assure you, notwithstanding Don Reilly's comment that these collections can be made easily, this is a miserable job to try to work out some arrangement by which you can collect those taxes. We have come down really to the necessity of collecting that tax at the airport where the tax is levied. Our tickets are sold everyplace, travel agents here and travel agents in foreign countries, and it is really quite impossible to put

them on the ticket. You cannot expect an agent in Karachi really to know that Mobile, Ala., has a head tax, and if he is supposed to know it he probably won't, so you have to collect them at the airport.

Senator Pearson. What did you use in Mobile, what system, a stamp?

Mr. Tipton. One thing about Mobile that distinguishes it from Philadelphia is that it is a departing tax, and we collect it at the counter and give a receipt and then remit the proceeds to the city. It is a fairly simplified procedure there. We have working groups in Philadelphia today trying to figure out the Philadelphia situation which, of course, handles vastly more passengers than any other airport we have studied, and we have to collect those not only as the passengers go out, which is the Mobile system, but also as the passengers come in, and we really have not the faintest idea as of this moment, 2 weeks before the tax goes into effect, how we are going to do it. The situation in Philadelphia will be—we had a lot of difficulty in Mobile, but we haven't seen anything yet.

(The statement follows:)

Statement of S. G. Tipton, President,
Air Transport Association of America

Mr. Chairman, Members of the Committee, I am Stuart G. Tipton, President of the Air Transport Association, which represents virtually all of the United States scheduled air carriers. The airlines appreciate this opportunity to comment on the important issues which the Committee is considering today, for the decisions which are made as a result of this hearing will have a significant impact on the kind of air transportation system this nation will have in coming years. Certainly, decisive action is needed to make the airport development program more responsive to a changing pattern of needs, and provide for the safe and unhindered travel of nearly 500 million air passengers annually by 1983.

The issue of state and local "head taxes" on air passengers is a most urgent matter. Your timely action in holding hearings on legislation to prohibit such taxes is clear evidence of your concern for the nation's air travelers. It is further encouraging to note that legislation has been introduced in the House and that hearings have been set for next week, so we are hopeful that the dilemma now facing the nation's air travelers, and the airlines, will be resolved soon. If not, head taxes are going to be a headache for everyone.

Traditionally, airline passengers in the United States have been free of the annoying, burdensome and expensive head tax system which prevails in foreign countries. That situation has changed, of course, as the result of a decision issued [p. 169] by the U. S. Supreme Court on April 19. Seven cities have already enacted head taxes on airline passengers and many others are proposed by states, as well as cities. The airlines are deeply concerned that, unless Congress acts, air travelers will increasingly become targets for undue and discriminatory taxes, since the Supreme Court's decision apparently did not provide sufficient safeguards.

The Court upheld the validity of a city-imposed "use and service charge" of $1 for each enplaning commercial passenger at Evansville, Indiana, and a New Hampshire state law levying $1 for a passenger on large commercial airlines and 50 cents a passenger on smaller planes. In Evansville, the money, to be collected directly from passengers by the airlines, was earmarked for maintenance and improvements at the airport. In New Hampshire, the state fixed the charge directly on the airlines, with half of the revenue to go into the state aeronautical fund and the balance going to the airport authority. The Court, in this instance, ruled that a state and city could constitutionally impose a reasonable charge on interstate and intrastate air passengers in order to underwrite aviation activities. Yet, the decision did not sufficiently define the ruling, as, for example, what constitutes a reasonable charge, or just how far a state or municipality could go in levying head

taxes. Obviously, the decision raised more questions than it answered, and the result was predictable.

"The boys have found a brand new cotton patch" one of my Southern friends observed when the decision was issued, and he was right. Head tax proposals cropped up all over the country—nearly two dozen so far.

It is significant that revenues which would be derived from some of these local or state head taxes would not be earmarked for airport development, but would be used to gain financial windfalls. The most extreme example of this is Philadelphia which has imposed a $2 head tax on deplaning as well as enplaning passengers, with the funds going, unmarked for airport development, into the cities' general fund.

So the head tax has already grown from a 50¢ charge for air commuter passengers in New Hampshire to a $4 charge for a Philadelphia round-trip. We believe that the Supreme Court ruling is more restrictive than some municipalities have interpreted it to be and many of the perplexing questions raised by this decision can, and may be, decided by costly litigation. However, we think that a far better solution is for Congress to preclude such head taxes.

The Supreme Court invited Congressional action by concluding in its decision that ". . . at least until Congress chooses to enact a nationwide rule, the power will not be denied to the States". There are many reasons for Congress to act on the Supreme Court suggestion, but I would like to focus on the following:

1. State and Local Head Taxes Are Inconsistent With the Uniform National Program

In 1970, this Committee and Congress passed the Airport and Airways Act in order to provide for urgently needed improvements in the national air transportation system. An Aviation Trust Fund was created, along with a variety of user charges to assure adequate and sustained funding. Among others, an 8% tax was levied on domestic tickets and $3 per person on international trips. Congress

thereby established a uniform national program of taxation and funding for airport and airway improvements. This Committee, as you have indicated, Mr. Chairman, never intended that air travelers would be subject to state and local head taxes as well as the national user charges. That was our understanding too. Actually, we thought there was no danger of this because of the basic constitutional guarantee of a citizen's right to unhindered interstate travel. A U.S. Supreme Court decision which had prevailed since 1867 indicated that such taxes could not be constitutionally imposed. Relying on this historical precedent, Congress incorporated in the Airport and Airways Development Act, the concept of uniformity which is so essential to the maintenance of a national air transportation system.

2. State and Local Head Taxes Would Complicate and Burden Air Travel

The complexity of such taxes would create annoying and costly problems for air passengers and airlines.

The local head tax hasn't been in existence very long in this country, but in Mobile, where we've begun collecting a head tax, one thing is clear—it makes people mad. We don't like that. After all, the goal of the airlines has always [p. 170] been to make travel easier, more comfortable and pleasant. We'd like to avoid anything which will annoy or delay passengers. Yet, the collection of head taxes does pose this problem for us. For example, we found that collecting the head tax in Mobile adds at least 45 seconds per customer to our passenger handling time. The confusion and delay at a smaller station, though serious, is nothing compared to the chaotic situation expected at the major terminals.

Can you imagine what will happen on July 1st when the airlines start collecting $2 from each enplaning passenger and $2 from each arriving passenger at the Philadelphia airport as the city ordinance requires?

The airlines have already spent several thousand man hours in attempting to devise procedures which will make the flow of passengers through the airport as smooth as possible in order to minimize delays and annoyance. But we still foresee almost insurmountable problems of administration and collection. First of all we will have trouble identifying the passengers to whom the tax applies since through passengers are exempt. Every ticket must be examined to determine whether the passenger is beginning or ending his trip in Philadelphia, or catching a connecting flight or merely laying over.

Collecting from boarding passengers will be difficult enough. But think of what the passengers and the airlines are going to encounter in trying to collect the $2 head tax from people getting off the planes! Passengers will not owe the tax if they are connecting to another plane. Some passengers will not have the money. Some will not have change. Visitors arriving from foreign countries may not have any U. S. money—will the airline passenger agent be expected to understand and accept foreign currency? What a welcome to the City of Brotherly Love. Many arriving passengers will be anxious to greet relatives, friends or associates. They do not want any delays. Most of you know from experience that, at the end of a flight, passengers want to debark promptly. What does the airline do if the passenger refuses to pay? These are only a few of the problems we foresee.

In addition to the problem of dealing with increasing numbers of irate passengers, airlines are concerned with the difficult and costly burden of administration and accounting for such taxes. Though we don't know precisely what these costs would be, we anticipate that the cost of administration to the airline may, in some cases, exceed $1 per passenger.

### 3. State and Local Head Taxes Add to Travel Costs and Inhibit Air Travel

One end result of state and local head taxes is to raise the cost of air travel. If the passenger must pay a local

head tax, it adds directly to the cost of his trip. If head taxes are initially absorbed by the carriers, they become an added cost of operation which must ultimately be borne by the passengers. If the carriers had to absorb $1 for every air passenger carried last year, that would amount to $170 million, which is about equal to the amount the industry lost over the past two years. The airlines could not reasonably be expected to bear such a burden. A fare increase would have to be implemented. Thus, the air passenger would lose either way on state and local head taxes.

In addition, there would come a point when this added cost might make air travel uneconomical for some people, and thus inhibit the growth of the air transportation system, particularly in short-haul markets.

The head tax imposes a flat rate on passengers, regardless of the distance traveled by the passenger. Therefore, the "short haul" passenger, paying only a $1 tax on a $15 ticket has his fare increased 7½% while a long haul passenger's fare may increase less than 1%. Since the head tax so substantially increases the cost of a short haul flight, a person may very well turn to other modes of transportation. We believe that the addition in Philadelphia of $4 to the cost of a round trip fare will have this effect, causing severe problems for the substantial local and commuter air service there. The diversion of this traffic from such air carriers would have a damaging effect on service to many smaller communities as well.

The impact on the regional airlines of a hodgepodge scheme of local head taxes would be most serious and the Association of Local Transport Airlines adopted a resolution at its meeting in Atlanta, Georgia, on May 4, 1972, urging passage of legislation which would make invalid any head tax imposed by any city, state or airport authority.

[p. 171]

4. State and Local Head Taxes Aren't Necessary

In Philadelphia, as we've pointed out, new taxes are to go into the general fund apparently to ease the city's finan-

cial crisis. Some other cities have the same thought in mind. Quite clearly, head taxes imposed for nonaviation purposes, or for programs which don't benefit the airport system where they are collected, would not be equitable, and are not even within the scope of the recent Supreme Court decision.

The question then arises, are state or local head taxes required to raise funds for airport development? We believe they are neither necessary nor desirable.

The way to resolve the dilemma that both air passengers and some local communities now find themselves in, would be to adjust the federal airport program by making the following changes:

1. change the federal-local matching ratio for airport projects from the present 50-50% to 90-10%. This would ease the financial pressure on local communities for airfield improvements. Their is ample precedent for the 90-10% ratio, in the interstate highway program; and

2. make public areas of terminal buildings eligible for federal funding. This is the area of greatest need which is not covered under the Airport and Airways Development Act.

Conversations with a number of airport officials indicate that these changes in the airport development program will in almost all instances, solve airport capital improvement programs. But there remains the question of whether of not state or local head taxes can or should be used to meet airport operating requirements in those cities medium or smaller hubs which do not have sufficient volume and revenues to meet operating costs. The change in the federal matching share on airport improvements will help in some of these situations by easing the local capital required and, thus, relieving the debt service portion of the operating budget.

But I think we must, quite frankly, look at the problem and ask whether every single airport can expect to be com-

pletely self-sustaining or whether there may not be some situations where a certain amount of general support from the community is warranted.

Any locality considering the imposition of a head tax would do well to stop and consider just what that airport means to the economic well-being of the community it serves. An airport does many things: it provides jobs and payrolls for local residents, it purchases goods and services from local merchants, it brings businessmen and tourists to the area and acts as a magnet for new business and industry.

The airlines have studied the impact of air transportation on a number of localities around the nation. One of the most outstanding examples of what air transportation does for a community can be seen at Las Vegas. Last year 3.5 million visitors came to Las Vegas by air and spent almost $200 million in the area. Total payroll of persons employed at the airport alone amounted to $13,691,750.

In Denver, Stapleton International Airport employs over 7,000 people earning about $95 million annually. The total direct impact of the airport on Denver comes to almost $150 million. The study also found that air travelers spend almost $65 million each year there.

These are only two examples from a number of cities surveyed. The story is always the same. An airport, far from being a tax burden, is a vital economic stimulent which benefits the whole community. Air transportation, in many cases, is not only an important element in a community's economic health, but the key to its development.

Dallas wisely recognized this recently when it rejected a proposed $1 head tax. We hope that the same sense of civic pride and enlightened self-interest which that city displayed will be evidenced elsewhere, but the only real assurance that head taxes will be precluded must be provided by Congress.

The federal airport program can simply be reshaped to make use of the air passenger's money that is *already*

in the Aviation Trust Fund, thereby making it easier for local communities to meet their airport capital needs, without taxing air passengers.

The revenues in the Aviation Trust Fund from the user taxes will exceed $760 million in fiscal 1973 and continue to grow to the point 10 years hence where the annual income will amount to $2 billion. Even taking into account the other [p. 172] authorized uses of the Fund, there is and will be enough money to meet airport needs, if the appropriate changes are made so it can be utilized. I appeared before this Committee not long ago and explained the paradox that now exists, where revenues from user charges in the Trust Fund are accumulating and yet, many projects are being held in abeyance because of the difficulty of providing matching funds, due to the financial anemia of some communities and the inability of air carriers to underwrite airport development through landing fees and rentals.

Conclusion

The ADAP changes, along with the prohibition of state or local head taxes, would assure the sustained development of the nation's airports in conformity with a uniform, national plan. Our air system is truly national in nature and scope and the response to the problems which confront it should be made in accord with that principle. The national air transportation system has been painstakingly built up over the years into the finest in the world, and we should not allow it to be disrupted now.

---

Background Information on the Passenger Head Tax

The Supreme Court on April 19 ruled that state or local airport facilities may tax airline passengers. The court's vote reversed numerous State Supreme Court decisions which had ruled such taxes to be unconstitutional as obstructions to interstate commerce (California, 1962; Indiana, 1970; Montana, 1970; New Jersey, 1970).

The airline industry in arguing against the head tax concept said approval of the tax would lead to such taxes across the country, and indeed it has. Five cities have enacted head taxes already, the most ludicrous being a $2 tax on enplaning *and* deplaning passengers at Philadelphia.

It should be stressed that it is unnecessary for airports to tax passengers further for support; that the Airport/Airways Trust Fund was set up to meet their needs. The ratio of 50/50 local and federal participation should be changed to 90-10% and make public areas of terminals eligible for federal funds rather than double taxation of airline passengers.

Even a seemingly small $1, $2 or $3 head tax added to the average air ticket price of around $50 may well turn many people away from flying and retard the growth of air transportation and the business and commerce of the community.

## Facts About Head Taxes

1. *A head tax is "double taxation" on the air traveler.*——To require the "users" of airport services to bear their fair share of the costs of those services has long been recognized as equitable. The airline passenger's ticket price, however, includes his share of the fees associated with aircraft landings and take-offs. To require the passenger to pay an additional sum simply for the act of enplanement or deplanement is to require him to pay twice for those same services. It should not be necessary since air travelers already pay 8% on domestic tickets, $3 on international, and there is sufficient money in the Aviation Trust Fund, as a consequence, to pay for airport development.

2. *A head tax serves to discourage air travel.*—It is inevitable that any time the "price" of air travel increases some people will be inclined to fall back on surface transportation. This results in fewer total people at airports, less total expenditures, a decrease in total revenues, and thus fewer jobs and less wage paid within the community.

3. *A head tax penalizes the short-haul traveler much more than the long-haul traveler, even though they both make use of the same airport services.*—For example: a head tax of only $1 may increase the short-haul passenger's ticket price by up to 10 per cent; the transcontinental passenger, however, bears a less than 1 per cent fair increase.

4. *A head tax tends to penalize the residents of the taxing community.*—By enacting a "head tax" on the act of enplanement or deplanement, travel to and from the taxing community simply becomes more expensive than travel to and from neighboring communities. This places the taxing community at a disadvantage while trying to attract new business with its accompanying increase in the tax base.

5. *A head tax is an inequitable and discriminatory means of raising revenue to support a local airport.*—An airport is "used" by many people who never actu- [p. 173] ally board an aircraft. Among these people are industrial lessees of airport property, commercial tenants such as restaurants and cocktail lounges, automobile rental agencies, newspaper and magazine vendors, life and property insurance agents, retail gasoline distributors, and even hotels, not to mention the large numbers of people present to welcome arriving passengers and "see off" those departing. The head tax separates a small portion of airport users and requires them to bear a disproportionate share of the cost of financing the airport.

6. *A head tax is a "self-defeating" attempt to provide funds for airport development.*—Airports have traditionally developed as a community service, bringing in business and industry to the surrounding area. Airports are economic gateways through which flow the United States mail, vast quantities of air cargo, vacation travelers and business people. Such activity generates a tremendous economic impact on the local community and should be encouraged, not discouraged by a tax which falls squarely on those people a community tries to attract.

7. *A head tax encroaches upon our traditional freedom to travel.*—By exacting a token on the "right to travel" over the "cost of travel", the head tax necessarily acts to restrict the citizen's freedom of movement. This restriction becomes even more distasteful here, in a nation founded upon the ideal of "individual freedom", than might be the case in some European countries having such a tax where this freedom is not part of the nation's cultural heritage. Unquestionably, a head tax serves to annoy and frustrate air passengers.

[Article from Chicago Today,
June 3, 1972 is Omitted].

. . . .

[Article from Richmond News Leader,
May 24, 1972 is Omitted].

. . . .

[The entire text of *Evansville-Vanderburgh Airport v. Delta Airlines, Inc.*, 405 U. S. 707 (1972) is reproduced at pp. 239-61 and is omitted here].

# AIR PASSENGER FEES— STATE AND LOCAL CHARGES

---

HEARINGS

Before The

SUBCOMMITTEE ON
TRANSPORTATION AND AERONAUTICS

Of The

COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE
HOUSE OF REPRESENTATIVES
Ninety-Second Congress
Second Session

On

H.R. 2337, H.R. 14847, and H.R. 10326
(and Identical Bills)

Bills Concerning State Taxation And The Federal Share Of Funds To Be Used For Airport Construction, Maintenance, And Improvements

June 19 and 23, 1972

Serial No. 92-74

Printed for the use of the
Committee on Interstate and Foreign Commerce

[p. 1]

## AIR PASSENGER FEES— STATE AND LOCAL CHARGES

Monday, June 19, 1972

House of Representatives,
Subcommittee on Transportation and Aeronautics,
Committee on Interstate and Foreign Commerce,
*Washington, D.C.*

The subcommittee met at 10 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. John Jarman (chairman) presiding.

Mr. Jarman. The subcommittee will please be in order.

Today we are resuming our aviation hearings.

Several weeks ago, we concluded that portion of this series of hearings which dealt with cargo security.[1] A bill on that subject, H.R. 10295, has been reported by the subcommittee to the full committee and will be taken up in a full committee executive session as soon as possible.

This phase of the hearings concerns State taxation and the Federal share of funds to be used for airport construction, maintenance, and improvements.

In a recent Supreme Court case (*Evansville-Vanderburgh Airport Authority District* versus *Delta Airlines, Inc.*, decided April 19, 1972), the Court, with Justice Douglas dissenting, held that a New Hampshire statute levying service charges on enplaning passengers is constitutional.

Since then, a number of local jurisdictions have taken steps to assess similar charges. This will create a good deal of complexity and expenses for the interstate users of air transportation and for the carriers.

The argument can be made that there should be a Federal preemption in this field and that the Airport and Airway Trust Fund is the proper method through which to generate funds for the support of the country's airports and airways.

Judging from the recent hearings on the Senate side, this matter is quite controversial.

I assure that the subcommittee will consider the proposals before us very carefully.

---

[1] "Cargo Security," hearings before the Subcommittee on Transportation and Aeronautics of the Committee on Interstate and Foreign Commerce, House of Representatives, 92d Congress, 2d session, held on May 18 and 19, 1972, Serial No. 92-70.

The text of the Supreme Court decision, the text of the bills pertaining to this hearing, and the agency reports thereon shall be placed in the record at this point, without objection.

(The material referred to follows:)

[The complete text of *Evansville-Vanderburgh Airport v. Delta Airlines, Inc.*, 405 U. S. 707 (1972) is reproduced at pp. 2-23 and is omitted here].

. . . .

[p. 24] 92d Congress
1st Session

H. R. 2337

---

IN THE HOUSE OF REPRESENTATIVES

January 26, 1971

Mr. Moss introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

---

A BILL

To amend the Federal Aviation Act of 1958 to prohibit State taxation of the carriage of persons in air transporation.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That title XI of the Federal Aviation Act of 1958 is amended by adding at the end thereof the following new section:

"State Taxation

"Sec. 1112. No State (or any political subdivision thereof) shall levy or collect a tax, fee, or other charge, directly or indirectly, on the carriage of persons in air transportation by any aircraft—

"(1) operated by an air carrier certificated by an agency of the United States to perform air transportation,

[p. 25] "(2) operated by any person subject to regulation by an agency of the United States in the performance of air transportation, or

"(3) operating to or from any airport financed, in whole or in part, from Federal funds."

Sec. 2. That portion of the table of contents contained in the first section of such Act which appears under the heading "TITLE XI—MISCELLANEOUS" is amended by adding at the end thereof

"Sec. 1112. State taxation."

. . . .

[p. 51] . . . .

STATEMENT OF HON. WHITNEY GILLILLAND, VICE CHAIRMAN, CIVIL AERONAUTICS BOARD

Mr. Gillilland. Thank you, Mr. Chairman, and members of the committee.

I have a short statement which I will read, if it meets with your approval.

Mr. Chairman, the Civil Aeronautics Board appreciates the opportunity to present its views on the four bills being considered by your subcommittee. Three of them would prohibit the States from taxing the carriage of persons in air transportation. Two of the three would, in addition, increase the Federal share payable on airport development projects from 50 to 62 percent, and provide for a 100 percent Federal payment with respect to "security facilities and equipment" for designated airports. The fourth bill would provide for Federal participation in costs incurred in the acquisition of safety equipment required for certification of an airport, under the Federal Aviation Act.

Regarding "head taxes," the Supreme Court's decision last April in the *Evansville* case has opened the way for the imposition of local taxes directly on airline passengers. It probably will not be long before passengers

will be paying an extra dollar or so, and maybe more, at each airport they visit—unless the Congress acts otherwise. Philadelphia has announced a plan to collect $2 from a passenger when he gets on an airplane, and $2 when he gets off. Richmond has imposed a $1 tax on enplaning passengers, effective July 1. Mobile, Ala., is already collecting a departure tax. Saginaw, Mich., and Sarasota, Fla., have enacted such taxes.

Moreover, it appears that head taxes may be constitutionally imposed which would doubly burden those passengers, particularly in our smaller cities, who must use connecting air services to reach their destinations. Such passengers might have to pay the tax each time they enplane, forcing double or treble taxes, while their big city cousins would pay but once.

[p. 52] In addition to such haphazard, unequal, and direct effects on passengers, these new taxes will undoubtedly impose an expensive new administrative and procedural burden on the air carriers. Ultimately, passengers will pay for this burden, as well.

For example, United Air Lines serves 88 cities in the United States, and in 1971 it carried 26,048,000 passengers. If but three-fourths of these cities adopted a head tax, United would be forced to collect them from almost 20,000,000 passengers, accumulate the amount, and remit to 66 cities. This means that United's staffing at its ticket counters and/or its boarding gates will have to increase, and so will the number of employees in its accounting department. The added out-of-pocket cost could approach $2,000,000 per year.

Moreover, if the tax is imposed in such a way as to require carriers to collect either enplaning or deplaning head taxes, or both, at point of sale, further expensive complications would arise in the settlement of intercarrier accounts, where charges are collected by one carrier on behalf of others. If travel agents are requested to collect them but fail to do so, in all likelihood the unpaid taxes would have to be paid by the carriers.

On the other hand, if taxes are collected when they are incurred, other problems arise. The practical administration of deplaning taxes seems exceptionally difficult. For example, suppose a passenger balks at paying $2 when leaving the plane. Is the carrier obligated to carry that passenger to the next stop?

Of course, a passenger is already paying 8 percent of his ticket as a Federal tax to help construct airports and provide improvements in safety. On international flights, he pays $3 Federal enplanement charge. These taxes reflect the user charge philosophy which is at the heart of the Airport and Airway Development Act of 1970.

Moreover, a portion of the ticket price covers the cost of airport facility rental charges, State and local taxes of various kinds, and landing fees at airports. It may be observed that the landing fees imposed on the Nation's airlines rose from $45.5 million in 1965 to $125.6 million in 1970, and the trend is continuing upward. The Board is concerned about this trend, and its implications for fares.

In some cases, increased taxes on airlines are not directed to airport development at all. The Supreme Court is being asked to review an Ohio tax on the gross receipts of airline business done in Ohio. The revenue from this source is earmarked under Ohio law to pay the deficit in the policeman's and fireman's disability and pension fund. We understand that the Philadelphia tax was imposed as a general revenue measure.

Head taxes are ultimately justifiable under the Supreme Court's decision as a form of user charge. As we have seen, the user charge philosophy already causes airline passengers to pay a good deal, but it would hardly be fair to put all the costs of building and running airports on the passengers.

Certainly, as users, passengers should pay for a fair share of the benefits. But let us not lose sight of the fact that an airport benefits a lot more people than just pas-

sengers. It is no speculation to predict, for example, that an economic catastrophe would overtake Los Angeles, if Los Angeles International were shut down. The fact is, a whole community gains enormously from an airport. Because this is so, it is [p. 53] entirely proper, in the Board's judgment, for a whole community, through general taxes, to pay a fair share of the cost of having an airport.

Airport financing is complex. The fair share is hard to fix. Limiting State and local governments' power to tax users of airports may have an impact on the Federal share under the Airport Development Act. These problems need to be sorted out. The Board suggests that the Congress consider imposing a moratorium of a year, or a year and a half, during which time no passenger head tax would be allowed. That should give all interested parties an opportunity to consider the direction this country ought to go in terms of airport financing. In fact, the FAA and the DOT are very capable of studying this in depth, coordinating with the interested groups and reporting back to Congress. Indeed, I am sure that the Civil Aeronautics Board would be in a position to make a substantial contribution.

If the Congress were to do this soon, the States would not be deprived of any revenues they are presently enjoying. Very few States or localities now have any head tax on airline passengers, since the conventional view until recently has been that State or local governments could not constitutionally impose them. But, by means of a moratorium, the Congress could prevent the almost certain mushrooming of a new kind of tax, that would be extremely difficult to get rid of, once the various States and localities adopted it, and became dependent upon it.

For these reasons, Mr. Chairman, the Board recommends legislation similar to provisions in H. R. 2337, H. R. 14847, and H. R. 14991, but having a duration of a year or 18 months, that would prohibit States from adopting taxes to be collected on a per-passenger basis.

I would add that present language in the three bills might be construed as prohibiting any form of user charge, such as landing fees. That could lead to difficult problems unless the Federal Government is prepared to provide sufficient operating funds to replace landing fees. Clarification of the bills in this respect would be desirable.

Pertaining to the proposals in H. R. 14847 and H. R. 14991 to increase the Federal share of airport projects costs, I have previously stated that limiting State and local governments' power to tax users of airports may have an impact on the Federal share under the Airport and Airway Development Act.

Until a determination is made as to what kind of a limitation, if any, is to be placed on State and local governments, the Board has no sufficient basis for further comment on these provisions.

We understand that the proposals, also contained in H. R. 14847 and H. R. 14991, that would result in the Federal Government paying the entire cost of "security equipment and facilities" are designed to assist in the struggle against air piracy or "skyjacking." The Board considers that the Government clearly has a major responsibility in this field and therefore believes that the Government should provide all or at very least the major share of the cost of the necessary facilities. No gap should be permitted to exist in our defenses against skyjacking simply because localities may not presently be financially able to share the costs.

The Board defers to the views of the Department of Transportation as to the desirability of provisions in H. R. 10326 which would provide [p. 54] for Federal participation in costs incurred in acquiring safety equipment required for the certification of airports under the Federal Aviation Act.

Thank you, Mr. Chairman.

That completes my statement.

Mr. Adams. Mr. Harvey.

Mr. Harvey. Thank you, Mr. Chairman.

Judge, if I understand what you are saying correctly, I find it is similar to what Mr. Shaffer said, only using a different approach.

In other words, Mr. Shaffer recommended that we do nothing at the present time and wait until we get a better understanding of this problem. You are recommending that we pass a complete prohibition at the present time, but make it one that terminates in 12 or 18 months. Is that correct?

Mr. Gillilland. That is correct.

I would think, and I have said so in the statement, that it isn't realistic to think that municipalities, many of which are hard pressed for revenue and are always seeking new ways and means, will not exploit this opportunity. I think they will and that these taxes will proliferate.

I believe they would be much harder to get rid of once the municipalities become dependent upon them, assuming that it is concluded by the Congress that they should be gotten rid of. I don't know what the ultimate result there might be.

But there ought to be a limited period of time here before the municipalities become dependent, in which the matter could be studied in depth. It is a very, very complex thing.

Mr. Harvey. Does CAB have the percentage of our citizens who use the airlines? Have you made any study of that?

Mr. Gillilland. You mean the total number of passengers?

Mr. Harvey. Yes. I know the Air Transport Association would have these figures but I wonder: Has the CAB made any study to determine what percentage of our citizens actually use the airlines?

Mr. Gillilland. What percentage of citizens? We have figures on that. I don't know what they are. We

could provide something for the record on that. It has been a rising percentage in recent years. It was not very great 10 or 14 years ago but I think it has increased.

Mr. Harvey. Would you care to approximate it this morning?

Mr. Gillilland. I don't believe I want to try to do it.

(The following information was received for the record:)

Proportion of the Population Who Use the Airlines

Surveying the adult population of the United States, the Gallup poll found that in June 1971 about 49 percent of the people had taken a trip on a commercial airline. This proportion has been rising slowly. In June 1970, the Gallup organization estimated it to be 47 percent. Back in 1965 the same survey placed it at only 38 percent.

Mr. Harvey. I have no further questions.

Mr. Adams. Mr. Kuykendall.

Mr. Kuykendall. Judge, it is good to have you with us today.

Am I to assume that in your present position that if you had to make a decision now on the current legislation, in lieu of the stopgap legislation that you are suggesting, that you would be against the collection of the local head tax?

Mr. Gillilland. That is true.

[p. 55] Mr. Kuykendall. In that case, I think you understand that we did reserve this area at the time we refused terminal access to the trust fund.

Mr. Gillilland. That is right.

Mr. Kuykendall. So, you are proposing that we reverse that philosophical decision.

What would you replace that money with? Increased Federal funding out of the trust fund?

Mr. Gillilland. I would not want to be understood as being opposed to the thought of a head tax completely.

The great danger here is——

Mr. Kuykendall. Wait a minute, Judge.

Mr. Gillilland. This is true.

Mr. Kuykendall. Isn't that like being a "little bit pregnant?" You either are or you aren't, aren't you?

Mr. Gillilland. No. You asked me whether in the present state of affairs, that I would favor prohibiting the head tax altogether. I answered the question "yes", and that is true. But that still does not mean that I might not be able to see some virtue in head taxes. I just don't think we know enough about it to pass on it.

Mr. Kuykendall. No one is disagreeing with you there.

Mr. Gillilland. I think the greatest trouble here is the lack of even-handedness in the business. It is true enough that the Supreme Court latched these taxes on to airport needs for construction and maintaining airports, but it also, I believe, had something to say about the nominal character of these taxes.

But it places the burden on the challenger of the tax. The devisers of taxes are pretty ingenious. I think we would find all sorts of taxes of this sort applied in different ways, and with different measures, all over the country if something isn't done, and that this would create an enormous burden on the movement of traffic and this is the thing that needs to be addressed.

I am not suggesting that the municipalities don't need funds but I think they need a greater discipline than just a determination by the Supreme Court that taxes of this kind are lawful.

Mr. Kuykendall. How did you interpret the more or less containing language that the Supreme Court used in describing more or less the limits of their permission?

Did you read it that the Supreme Court, itself, when granting this authority, tried to limit it?

Mr. Gillilland. Mr. Kuykendall, I think in the sense that they were not going to pass on any more than they had to as to what was lawful and what was constitutional in this instance, but I believe they left the door open for the exercise of all sorts of ingenuity in developing new taxes. I don't see how they can do anything else. They have to proceed on a case-by-case basis to deal with these matters. And for years and years it has been a shifting scene as to just what constitutes a burden on interstate commerce in this field.

I think the main thing is that we need to achieve a proper discipline. You could not even exclude the possibility, as I see it, that it might be better to increase the Federal tax and distribute some of that fund to the municipalities, or a percentage of it. I don't advocate any such thing at this time, but I think this whole field and its relationship to [p. 56] landing fees which have proliferated so greatly, ought to be studied in greater depth than it has been now, and perhaps the agencies could come forward at a later time with better and more sophisticated recommendations as to what this legislation ought to be than they can now. That is the reason we would favor a moratorium, so that that can be accomplished before the municipalities get dependent on this kind of revenue.

Mr. Kuykendall. I think you have gathered something about the temper of this committee and its concern. Those of us who seem to be opposing this legislation as it is written are definitely not objecting to tightening the boundaries and asking for uniformity and sensibility. I had one question I was going to ask you that might trap you a little bit but you have already answered it and trapped yourself.

Mr. Gillilland. Maybe.

Mr. Kuykendall. I wanted to kid you a little bit and I am glad to see you laughing.

You started out by saying that one of the justifications for requiring the community to take part of the responsibility for the airport expansion is the fact that an airport offers many more benefits than just those for passengers. And yet, you said there is a possibility that you might have to turn to the Federal Government for all 80-90 percent.

Mr. Gillilland. I made that a little too high.

Mr. Kuykendall. I wanted to kid you there, because I want to make the point that if we shift this burden to the passengers, the passengers won't be able to fly. That is a fact.

Mr. Gillilland. I was thinking about a shift, but I want to make it clear that I don't now advocate that, I may be very much opposed to it later on. It is just a possibility. But, as I see it at the moment, the shift would be as a device to gain uniformity and attain a similar amount of funds to the benefit of the municipalities that they would otherwise have.

Here, I think, is the thing to be borne in mind in that connection: The burden on the airport does not relate too much to the length of the journey the passenger has to pay for. You have got a similar burden, maybe not identical, but similar, from a passenger buying a $25 ticket to that from a passenger acquiring a $200 ticket.

So, I don't know that it is proper that the taxes be a percentage of the amount of the ticket in this instance. I just don't know.

What I do say is that this is a very complex thing and should be studied.

Mr. Kuykendall. I have mixed emotions about this percentage business, too, and Mr. Harvey's statement to me earlier caused me to have summary thinking.

But the point I want to make through my questions, Mr. Chairman, is that I don't want to, if possible, leave the illusion that we have much slack in this trust fund.

We don't have a slack and if we start shifting burdens to the trust fund we are going to have to increase the tax and the passenger is going to pay every dime of it. If we start doing these things and then have to cut back on our safety equipment in the future, we will be fooling ourselves.

So, if you have a trust fund with no slack in it and you put extra burdens on it, there is not but one source of money and that is the taxpayer.

Thank you, Mr. Chairman.

[p. 57] Mr. Adams. Congressman Thompson.

Mr. Thompson. Judge, one thing that concerns me of years is when you start talking about airports is that I don't want to see an airport take the airline passengers money and then use it for nonairport purposes.

I, personally, believe that the airports provide a very definite benefit to cities and regions beyond the direct revenue that is received.

I was in a seminar at the Arden-Hoe House about a year ago, a transportation seminar. At that time, the head of the New York City Port Authority made known to us that money was being taken out of the airport operations to subsidize the subways in New York City. I think the CAB should look into this matter because, by that time, I forget the precise figure, it was $14 or $16 million. I think that was the first time that it had ever been admitted; at least that is what several participants in the panel said; they had suspected it but it had never been admitted this had been done.

We talk about a head tax and this is, of course, the subject of our hearings here today. I have mixed emotions about it, mixed emotions because I know some airports do not receive revenues. I do not want in any way to take any money from safety purposes that would otherwise supplement a city's revenue but I would want to be absolutely certain that city or authority is not draining money from that airport for nonairways purposes as by

the statement made a year ago which is a fact in New York City Port Authority.

I would hope that the CAB would look into that further because that was a positive statement made.

Your job, of course, is in direct relationships with the economic spheres of the airlines and you can recognize your desire for uniformity.

Your idea for a 1-year moratorium appears to me to have merit more so than what the FAA proposed.

I am not asking you questions. I am simply making a statement. But I think you have a sound position in this matter.

I am concerned that if we are involved too much in inaction, you may see a proliferation and you might say one airport will charge $5 a head tax and the customer is going to be very upset when he finds he is paying more in one area than another.

I would like to congratulate you on your statement and urge that CAB look into the matter of whether or not airport authorities throughout the area possibly have some required mandatory reporting on fiscal accountability of the airports. In other words, if you take all of their concessions and everything else that goes in there, if they are draining money off of that airport, then, somehow, I would hope that, I don't know if CAB would be the proper agency, but probably FAA, but somebody should step in and say, you are not getting money for fences or other purposes as long as money is drained off.

Mr. Gillilland. I suspect that is a function of FAA rather than ours but we will give it some attention.

Mr. Adams. I have a question.

Does your statement represent a feeling of all members of the CAB? Is this generally their position?

Mr. Gillilland. I am quite confident that is true. I know of nothing that is to the contrary.

[p. 58] Mr. Adams. You mentioned earlier in your statement that the Supreme Court must rule on a case-by-case basis. Isn't that true?

Mr. Gillilland. Yes.

Mr. Adams. In other words, they have said that Evansville and New Hampshire airports could each charge a dollar. But there is the Ohio case pending, whether or not these funds could be used for something other than airport development. Isn't that correct?

Mr. Gillilland. Well, this tax in Ohio was levied against the revenues of the air carriers allocable to the State and I believe those funds were earmarked to be used in the policemen's or firemen's pension fund or something of that kind. But they were not levied directly against the passengers.

Mr. Adams. CAB has economic regulation powers over all of the commercial airlines, does it not?

Mr. Gillilland. Yes.

Mr. Adams. And you said both tariffs and you also establish subsidies for some of the smaller carriers when they are unable to complete operations in some areas without a subsidy; isn't that correct?

Mr. Gillilland. That is true.

Mr. Adams. Won't the establishment of a head tax and the attendant cost of collecting change your whole regulatory system? Won't the CAB have to compensate for that in setting rates?

Mr. Gillilland. I would think that it would affect them; yes. It would be a complicated item.

Mr. Adams. Actually, if you have to have somebody there collecting these as they go along, I think you pointed out that each passenger cost the terminal the same, but that each passenger is just as expensive to process with a head tax. Is that not correct?

Mr. Gillilland. That is true.

Mr. Adams. So that, with a smaller carrier or particularly a local carrier that may be under subsidy with shorter routes, still having the same volume of passengers, their loss ratio or their expense revenue per dollar earned will substantially increase over that of the longer haul carriers, will it not?

Mr. Gillilland. Very much so.

Mr. Adams. And those are the areas that we presently have to allocate subsidies to, are they not?

Mr. Gillilland. That is true.

Mr. Adams. So, aren't we kind of involved with the Federal Government taking money out of one pocket and, in effect, giving it indirectly to the States or counties as they collect their head tax?

Mr. Gillilland. It certainly has that aspect, Mr. Adams.

Mr. Adams. I certainly appreciate your testimony, and perhaps a moratorium is the way. I think this is so bad and I, frankly, cannot, from reading the *Crandall* case, understand how, when the *Crandall* case said you couldn't collect a dollar per passenger for a railroad passenger, how you can collect a dollar per passenger for airport passengers.

The Supreme Court opinion says in that circumstance:

"At least until Congress chooses to enact a nationwide rule, the power will not be denied to the States," citing *Freeman v. Hewitt.*

Certainly this committee, in this member's opinion, has responsibility to act, whether we should put a moratorium on so you and other agencies and interested parties could examine and tell us what the [p. 59] impact will be on the Federal rate structure and on total aviation industry. Whether we should prohibit immediately seems to me to be a debatable point. But I think this committee should act.

I appreciate your coming this morning and testifying for the committee.

The committee will now stand adjourned until 2 o'clock this afternoon to continue with witnesses.

Thank all of you for coming, particularly you, Judge Gillilland.

The committee is recessed until 2 o'clock.

(Whereupon, at 12 noon, the subcommittee recessed, to reconvene at 2 p.m. of the same day.)

After Recess

(The subcommittee reconvened at 2 p.m., Hon. Brock Adams presiding.)

Mr. Adams. The subcommittee will come to order.

The next witness is Mr. Stuart G. Tipton, president of the Air Transport Association of America.

Mr. Tipton, we are pleased to have you here today. Introduce your colleagues for us, please.

STATEMENT OF STUART G. TIPTON, PRESIDENT, AIR TRANSPORT ASSOCIATION OF AMERICA; ACCOMPANIED BY JOHN DUBA, VICE PRESIDENT, AIR TRANSPORT FACILITIES; AND LEO SEYBOLD, VICE PRESIDENT, FEDERAL AFFAIRS

Mr. Tipton. Thank you, Mr. Chairman, and Mr. Harvey, for permitting us to come before the committee today. I am accompanied by, on my right, Mr. John Duba, vice president of the Air Transport Association in charge of air transport facilities. I rather think that the gentleman on my left does not require an introduction, but for the record he is Mr. Leo Seybold, vice president of Federal affairs of the association.

In response to the chairman's original suggestion, I would be pleased to put my full statement on these charts

into the record and proceed in summary form so as to cover the subject as closely as I can within 10 minutes.

Mr. Adams. Without objection, Mr. Tipton, your statement will appear in full following your summary, and if you wish to proceed now, the committee will be pleased.

Mr. Tipton. Thank you, Mr. Chairman.

The hearing brings us again to a discussion of airport financing on which this committee has spent so much time and on which such effective legislation has resulted.

The committee has established a uniform national plan for the development of the airports of the Nation, and has based that plan on assessment against users of the cost of that facility, and has established a trust fund in which the money is placed and from which it is taken.

In establishing that national level of taxation for the passengers, shippers, airlines, and general aviation, they have, through careful study of the system of taxation, provided for what we regard, and I think that passengers regard, as a fair and equitable method of dealing with the problem of financing airports.

[p. 60] In the process of the administration of this trust fund, I should point out that approximately $700 million was placed in the trust fund in fiscal year 1972, most of that from passengers, so the passenger is at this point paying very substantial sums for the development of airports.

Now, having established that national plan, we are faced here with two additional and basic problems. One of them arises in this fashion. Our airport needs have not been reduced in any respect. I think, if we look down the road, they seem to have increased somewhat from the figures we had before us at the time the committee considered this legislation in 1970 and 1971.

By the same token, by reason of the difficult financial position of both the cities and the airports, it appears that

we will have great difficulty in getting that money out of the trust fund for airport development purposes. The difficulty arises from the fact, of course, that the cities or the airlines or both must put up the necessary money, the necessary 50 percent of the total project, in order to get the other 50 percent out of the trust fund.

What we anticipate at the present time, and I will develop this in a little more detail in a moment, is that before very long we will find that we have very substantial airport needs that are unmet, that we have very substantial funds in the trust fund and we will not be able to get them out. The needs will be there, and our trust fund will be to a very substantial degree a savings account which cannot be drawn upon.

That is the statement of the first problem that I think we are asking the committee to give consideration to today, and we have recommendations for dealing with it.

The second problem arises out of the Supreme Court decision which was thoroughly discussed this morning and in which the Court said that head taxes could now be levied on the individual passenger by local communities.

I do want to emphasize, though, a point made by Vice Chairman Gillilland, and that is, while the Supreme Court said it was legal to do so, the Supreme Court did not say that it was wise. As a matter of fact, the Court pointed out in a sentence clearly addressed to the Congress that until Congress speaks in establishing the uniform system, the power to levy head taxes will not be denied to the States.

So the Court has pointed out that the Congress ultimately is the one who decides what the national policy shall be.

In order to present this picture as quickly as I can, and hopefully as clearly, I would ask the members of the committee to turn to the back of my testimony, where I have four charts.

Taking up first chart A . . .

. . . .

[p. 63] . . . .

Let me cover in just a few minutes the reasons why, in our opinion, the individual head tax as contemplated is a bad tax. I will cover it quickly, though it is, of course, of enormous importance to us.

The first reason: The Congress laid down a national plan which established equitable taxation to which no one objects, and it produces vast amounts of revenue. Every passenger, on the average, pays $4 for his ticket. That is a good, substantial tax, 8 percent of the value of his ticket, which averages out at about $4.

A national plan is particularly essential in view of the complexity and extensiveness of the air transport system to the United States. There is no system like it in the world. The U. S. airlines within the country transport more passengers, cheaper than any other system in the world. We should keep it that way.

Second: The imposition of individual head taxes immeasurably complicates the process of moving throughout this country over an airline, far more than one would expect by looking at the surface. We have nine of these taxes on the books, one of them in effect. We have the job usually of collecting them. We have worked for years to cut down the time involved in ticketing and handling a passenger in terminals because the passengers have demanded, in their use of air transportation, they don't want to fiddle around, they don't want to stand in line.

**The imposition on that passenger of a dollar head tax doesn't seem like much trouble, but something has to be done to get the dollar: First, you have to assure yourself that the passenger owes it. He might be one of the exempted groups. Second, you have to give him something to show that he has paid it. Third, the airline has to keep something to show that it collected it. And fourth, it must subject itself to an audit of its activities, to be sure that it is doing its work right under the local ordinance.**

It costs us—the study we had made a couple of years ago says it cost us $4 a piece for making a reservation and selling a ticket, each one $4. In going through the process of collecting the head tax and accounting for it, I would be greatly surprised if it would not add to our expense abo: $1.

We still have to give the city the dollar all right, because we normally don't get much of a rebate or a sales commission for these dollars, but I would like to bet, and I emphasize that I am estimating here, that if it costs us $4 to sell a ticket and make a reservation it will cost us at least a dollar to collect this dollar.

We know that we only have one of these in effect now, that is, Mobile. When it went into effect the other day, we found out what the passenger reaction was. They were mad. Of course, we don't like to have our passengers mad.

Philadelphia's goes into effect on the first of July. That will be a mess the like of which you have never seen, because we have to get them both coming and going. But getting them going is, heaven knows, hard enough in a big airport like that.

[p. 64] The third point against the head tax: it is decidedly inequitable. In the first place, you pay $1 for a $17 ticket and you pay $1 for a $500 ticket. It is all the same. For the short-haul carrier that is tough, because that increases his fare by a percentage that is very high.

Fourth, the tax, in our opinion, is self-defeating, as far as the community that charges it is concerned, because the communities that have been attracted to opportunities to charge the head tax have been communities that are suffering a deficit in the operation of their airport, and thus their action is to a degree understandable.

However, it is our belief that the airport is such a valuable part of that community's total economic operation, of the community's effort to grow and to become more economically self-sufficient, that the assessment of a head tax is self-defeating.

We have been making studies here recently of the economic impact of airports, and these studies have turned

out to be truly remarkable in the data that they have brought forward on the real value of an airport to a community. I will mention only two; I have records here at this point of 12:

In Atlanta, airline and airport related employment in Atlanta last year totaled 17,541, with a payroll of $289 million. Estimated economic impact of the airport on the area $363 million.

Denver employs over 7,000 people. They earn $95 million annually. Total direct impact of the airport on Denver comes to almost $150 million. The study also found that air travelers spent almost $65 million each year there.

It seems to us, therefore, when you consider just these two examples, that a city, even though it is running at a deficit, is getting tremendous value out of its airport. If it didn't have an airport, it would be a dead city economically, and there can be no question about it. And the testimony of the industrial concerns demanding before they will go to a city the existence of an airport, testifies to that also.

The final point on the head tax: the tax actually is uncontrollable so far as its application is concerned. The Supreme Court standards are vague. The only way to test whether a particular head tax is a legal head tax or not is to litigate it again to the Supreme Court. As soon as Philadelphia's goes into effect, back up we go.

And I see no end to this process of carrying one head tax after another to the Supreme Court in order to develop the law more clearly on that.

I think that that demonstrates the unwisdom, the real burdensome character of a head tax, and based on that, we would surely hope that this committee would adhere to its original decision and continue to insist upon a national system of taxation for airport improvement.

I do want to support and state briefly what I stated more extensively in our testimony: the need for a 100 percent Federal contribution for security equipment at airports. We believe that is thoroughly justified.

I need to make one brief comment on the position taken by the FAA and Department of Transportation. The position argued there is that what we should do is wait, we should wait and see what the cities and States do with this tax, and then if it looks like it isn't very good, presumably something would be done to unravel what had already been started.

[p. 65] I share Chairman Gillilland's position exactly that once this is established as a source of revenue, it cannot be stopped. I think now is the time to determine whether the passengers on the airlines of the United States will be plagued all over the country with individual head taxes or not, and I think we have data and experience up to this point which indicate that it would be a backward step in air transportation.

The comment was that it was contrary to the administration position in support of revenue sharing. I think that is quite wrong. The Airport Development Act recognizes that it was possible for the Federal Government to lay down a uniform tax throughout the country and laid in that tax with the full provision for giving the money back; in other words, to share the money with the local communities that were responsible for airports. The law we have now is a revenue sharing provision.

I think that I have covered the points, Mr. Chairman, and I would be glad to receive any questions.

(Mr. Tipton's prepared statement follows:)

**Statement of Stuart G. Tipton, President, Air Transport Association of America**

**[The text of Mr. Tipton's prepared statement is omitted because his remarks are substantially similar to those reproduced above in the Senate Hearings].**

**118 CONG. REC. 22,598-99 (JUNE 27, 1972).**

By Mr. CANNON (for himself and Mr. Magnuson):

S. 3755. A bill to amend the Airport and Airway Development Act of 1970 to increase the U. S. share of allowable project costs under such act; to amend the Federal Aviation Act of 1958 to prohibit certain State taxation of persons in air transportation and for other purposes. Referred to the Committee on Commerce.

AIRPORT DEVELOPMENT ACCELERATION ACT OF 1972

Mr. CANNON. Mr. President, I am introducing a bill today to be known as the Airport Development Acceleration Act of 1972.

In the view of myself and the cosponsors, the bill represents our current thinking of how best to improve the landmark 1970 legislation known as the Airport and Airway Development Act. As my colleagues know, that act has been of immeasurable assistance in assisting local communities in meeting the ever increasing aviation needs required to support the U. S. air transportation system. The act provides for massive Federal assistance to local governments by providing nearly $300 million a year in Federal grants to local airport sponsors, which, in most cases, are counties and municipalities. Like most comprehensive programs the Airport and Airway Development Act, because of its size and scope, requires continued changes and updating to make certain that it continues to meet the needs for aviation development in the United States. This spring, the Subcommittee on Aviation, which I chair, held hearings on airport development problems and proposals to update the 1970 law to make it more responsive to local aviation needs.

The bill I am introducing today expresses my commitment to provide a better program to assist local communities in developing airport facilities.

Basically, Mr. President, the bill has seven provisions amending the Airport and Airway Development Act and one which amends the Federal Aviation Act of 1958.

Finally, [seventh] my bill prohibits State and local taxation on airline passengers or on the airlines themselves, but does not prohibit airport operators from levying and collecting other reasonable user charges such as landing fees, rental charges, and so forth. The provision will prohibit a new, inequitable, and potentially chaotic burden of taxation on the nearly 200 million air travelers in this country. The legislation would prohibit the levying of State or local head taxes, fees, or charges either on passengers or on the carriage of such passengers in interstate commerce. The bill is in response to a situation which has been brought about by a recent Supreme Court decision upholding passenger head taxes enacted by New Hampshire and by Evansville, Ind., for "aviation-related purposes." While this decision has invited State and local governments to enact head taxes or fees on air travelers, the Court decision does not provide adequate safeguards to prevent undue or discriminatory taxation.

In the wake of this decision, a rash of proposals varying widely in rate, scope and applicability, has broken out throughout the Nation. It is significant that revenues from some of these head taxes would not be used to provide funds for airport construction or operation, but would be used to nourish general fund coffers. For example, Philadelphia has levied a tax of $2 per passenger on passengers both arriving in and departing from that city.

The revenues will accrue to the city's general fund not the Philadelphia airport. Other cities as well have leveled their sights at air travelers who are convenient, vulnerable and captive targets. Certainly we can anticipate the proliferation of such action.

Mr. President, Congress must act to protect the American air travel consumer from such discriminatory taxation, in observance of an old axiom that "In levying taxes and in shearing sheep, it is well to stop when you get down to the skin." The Nation's air travelers are already being heavily taxed to pay for airport facilities and airways modernization. As a result of the 1970 act

every passenger in air transportation pays an 8-percent excise tax on the price of his ticket to support these developments. Total user tax revenues will reach about $693 million this year. Since this tax money is earmarked for airport and airway improvements, there is no need to add an additional burden of taxation on these travelers or on the carriers and in fact, it would be a breach of faith for Congress to stand idly by while this is done by other units of government.

Mr. President, at the present time the average value of a round trip airline ticket in the United States is about $85. Therefore, the average traveler today pays a Federal tax of $6.80, the revenues from which are reserved for aviation facilities development. In 1970, while the Committee on Commerce and the Committee on Finance were considering this legislation, it was our firm intent that the Federal excise tax be the only tax on passengers in air transportation. While the Supreme Court has said that Congress did not preempt this field in 1970, it was certainly our intention, in my opinion, to do so. At that time several States and local government had attempted to levy head taxes on passengers in air transportation and it was widely assumed because of lower court decisions and qualified legal opinion that such taxes were unconstitutional as an undue burden on interstate commerce.

Despite the views we heard in 1969 and 1970 and despite the fact that the Federal Government presently taxes passengers at the rate of 8-percent on airline tickets, the High Court has opened the door wide to multiple passenger taxation.

Something must be done, and it is fitting that the Nation's air travelers look to us for decisive action. In its decision, the Supreme Court seemed to invite congressional action for the Court pointed out that—

At least until Congress chooses to enact a nationwide rule, the power will not be denied to the States.

The legislation introduced today, provides the vehicle for Congress to make it clear that it will not allow indis-

criminate levying of burdensome head taxes on citizens traveling in interstate commerce. Nor will we allow the growth of our national air transportation system to be impeded by abandoning it to the chaos of discriminatory taxation on air travelers.

Mr. President, this bill will be considered by the Commerce Committee in executive session shortly and hopefully favorably reported.

I hope that it will have the enthusiastic support of all the members of the Senate as it provides great new sources of Federal assistance and cooperation in assisting local communities in meeting the aviation needs of the future.

SENATE

92d Congress
*2d Session*

Report
No. 92-1005

# AMENDING THE AIRPORT AND AIRWAY DEVELOPMENT ACT OF 1970

August 1, 1972.—Ordered to be printed

Mr. Cannon, from the Committee on Commerce, submitted the following

## REPORT

[To accompany S. 3755]

The Committee on Commerce, to which was referred the bill (S. 3755) to amend the Airport and Airway Development Act of 1970 to increase the United States share of allowable projects costs under such Act; to amend the Federal Aviation Act of 1958 to prohibit certain state taxation of persons in air transportation, and for other purposes having considered the same, reports favorably thereon with amendment(s) and recommends that the bill (as amended) do pass.

The bill, with amendments, is printed below.

The amendments are indicated as follows: Omit the part in brackets and insert the part printed in italic.

***Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*** That this Act may be cited as the "Airport Development Acceleration Act of 1972".

. . . .

[p. 4] . . . .

**Sec. 7. (a) Title XI of the Federal Aviation Act of 1958 is amended by adding at the end thereof the following new section:**

["State Taxation

"Sec. 1113. No State (or political subdivision thereof) shall levy or collect a tax, fee, head charge or other charge, directly or indirectly on persons traveling in air transportation or the carriage of persons' air transportation, or on the gross receipts derived therefrom. Provided, however, that nothing herein shall prohibit a State (or any political subdivision thereof) from the levy or collection of taxes other than those enumerated above, including property taxes, net income taxes, franchise taxes, and sales or use taxes on the sale of goods or services (other than on the sale of interstate air transportation or any portion thereof); and further provided, that nothing herein shall prohibit a State (or political subdivision thereof) owning or operating an airport from the levy or collection of reasonable rental charges, landing fees, and other service charges for the use of airport facilities (measured on other than a per-passenger basis)."]

"State Taxation of Air Commerce

*"Sec. 1113(a). No State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Island, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more states) shall levy or collect a tax, fee, head charge, or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom.*

*"(b) Nothing herein shall prohibit a State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more states) from the levy or collection of taxes other than those enumerated in subsection (a) of this section, including property taxes, net income taxes, franchise taxes, and sales or use taxes on the sale of goods or services and nothing herein shall*

*prohibit a State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Is-* [p. 5] *lands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more states) owning or operating an airport from levying or collecting reasonable rental charges, landing fees, and other service charges from aircraft operators for the use of airport facilities."*

(b) That portion of the table of contents contained in the first section of such Act which appears under the center heading "TITLE XI—MISCELLANEOUS" is amended by adding at the end thereof the following: ["Sec. 1113. State taxation."] *"Sec. 1113. State taxation of air commerce."*.

Amend the title so as to read: "A bill to amend the Airport and Airway Development Act of 1970, as amended, to increase the United States share of allowable project costs under such act; to amend the Federal Aviation Act of 1958, as amended, to prohibit certain state taxation of persons in air commerce, and for other purposes."

Purpose of the Bill

S. 3755 amends the Airport and Airway Development Act of 1970 and the Federal Aviation Act of 1958 so as to increase Federal financial assistance for airport development throughout the United States. It also prohibits the levying, by State and local governments, of passenger "head" taxes or use taxes on the carriage of persons in air transportation.

The legislation to provide increased Federal participation in airport development grants is required because of the serious financial difficulties being experienced by many local government agencies who bear the responsibility to build, operate and maintain the nation's system of publicly owned airports. The funds required to increase the Federal share of airport development grants will come from the Airport and Airway Trust Fund established by the Airport and Airway Revenue Act of 1970. The fund is funded from revenues from user taxes on aviation sys-

tem users and contains and will contain adequate revenues to cover the cost of the increased Federal assistance. No new taxation or no expenditure of general U. S. funds will be required as a result of the legislation.

The bill prohibits any government agency other than the United States from establishing or levying a passenger head tax or use tax on the carriage of persons in air transportation. This prohibition will ensure that passengers and air carriers will be taxed at a uniform rate—by the United States—and that local "head" taxes will not be permitted to inhibit the flow of interstate commerce and the growth and development of air transportation.

Provisions of the Bill

. . . .

[p. 7] . . . .

Section 7 of the bill adds a new Section 1113 to the Federal Aviation Act of 1958 prohibiting any tax, fee, head charge or other charge directly or indirectly, on persons traveling in air transportation or on the carriage of persons in air transportation or on the gross receipts derived therefrom. The bill allows, however, for the continuation of the levy and collection of other reasonable rental charges, landing fees and other service charges for the use of airport facilities.

Finally, Section 7(b) of the bill amends the table of contents of the Federal Aviation Act to bring it into conformity with the addition of the new Section 1113.

HOUSE OF REPRESENTATIVES

92d Congress
*2d Session*

Report
No. 92-1279

# AIR PASSENGER FEES—STATE AND LOCAL CHARGES

August 2, 1972.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. Staggers, from the Committee on Interstate and Foreign Commerce, submitted the following

## REPORT

[To accompany H.R. 14847]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H.R. 14847) to amend the Airport and Airway Development Act of 1970 to increase from 50 to 75 per centum the U. S. share of allowable project costs payable under such act; to amend the Federal Aviation Act of 1958 to prohibit State taxation of the carriage of persons in air transportation; and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following: That, during the eighteen-month period beginning on the date of enactment of this Act, no State (or any political subdivision thereof) shall levy or collect any tax, fee, or other charge, directly or indirectly, on persons traveling in interstate, overseas, or foreign air transportation or on the carriage of persons in interstate, overseas, or foreign air transportation.

Sec. 2. (a) The Civil Aeronautics Board shall conduct a full and complete investigation of taxes, fees, and other charges levied and collected by States and their

political subdivisions, directly or indirectly, on persons traveling in interstate, overseas, or foreign air transportation or on the carriage of persons in interstate, overseas, or foreign air transportation in order to determine the effect of such taxes, fees, or other charges on air transportation in the United States. Not later than twelve months after the date of enactment of this Act, the Board shall report to the President and to the Congress the results of such investigation, together with such recommendations as it may deem appropriate.

(b) The Civil Aeronautics Board may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Board, the head of such department or agency shall furnish the information so requested.

(c) In the conduct of the investigation required by this section, the Civil Aeronautics Board may hold hearings, issue subpoenas, administer oaths, examine witnesses, and receive evidence in the same manner as provided by section 1004 of the Federal Aviation Act of 1958 (49 U. S. C. 1484).

Sec. 3. As used in this Act—

(1) the term "State" means a State of the United States, the Commonwealth of Puerto Rico, the District of Columbia, the Virgin Islands, and Guam; and

[p. 2] (2) the terms "interstate air transportation", "overseas air transportation", and "foreign air transportation" shall have the same meaning given such terms by section 101(21) of the Federal Aviation Act of 1958 (49 U. S. C. 1301(21)).

Sec. 4. There are authorized to be appropriated such sums, not to exceed $100,000, as may be necessary to enable the Civil Aeronautics Board to carry out the provisions of section 2 of this Act.

Sec. 5. The first sentence of Section 12(a) of the Airport and Airway Development Act of 1970 (49 U. S. C.

1712(a)) as amended by striking out "two years" and inserting in lieu thereof "three years".

Amend the title so as to read: "A bill to provide for a moratorium on State taxation of the carriage of persons in air transportation, and for other purposes.".

## Purpose

The purpose of this legislation is to authorize the Civil Aeronautics Board to conduct a 1-year study to determine the financial needs at airports which are funded in whole or in part at a State or local level. The Civil Aeronautics Board is to report to the President and to the Congress the results of its investigation with appropriate recommendations as to how the financial needs at airports may best be met. In order to allow time for the Civil Aeronautics Board's investigation and report and for congressional review of the Board's action, the legislation provides for an 18-month moratorium barring States, or subdivisions thereof, from levying or collecting any charges on persons traveling in air transportation.

## Hearings

On June 19 and 23, 1972, the Subcommittee on Transportation and Aeronautics held hearings on H.R. 2337, H. R. 10326, H. R. 10470, H. R. 10864, H. R. 14847, and H. R. 14991. The hearings revolved around the question of State and local taxation and the Federal share of funds to be used for airport construction, maintenance, and improvements. Interest in the hearings was augmented by recent United States Supreme Court cases upholding the constitutionality of enplaning charges on passengers using scheduled aircraft. (***Evansville-Vanderburgh Airport Authority District et al. v. Delta Airlines, Inc., et al.; Northeast Airlines, Inc., et al. v. New Hampshire Aeronautics Commission et al.*** April 19, 1972). For complete text of Supreme Court decision, see page 2 of hearings, Serial No. 92-74. Witnesses representing virtually all segments of air transportation appeared. Their presentations ranged from recommendations against any legislation to recommendations

of a permanent prohibition against State and local charges on air passengers.

## Committee Action

On June 27, 1972, the Subcommittee on Transportation and Aeronautics considered the several legislative proposals included in the [p. 3] hearing record and determined to report H.R. 14847 with an amendment to limit the bill to an 18-month moratorium barring the levying or collecting of State or local charges on passengers in air transportation. The subcommittee action was unanimous.

On July 26, 1972, the Committee on Interstate and Foreign Commerce considered H.R. 14847 and reported favorably by voice vote with two amendments. The first amendment eliminated a "grandfather clause" which would have allowed States or subdivisions thereof to continue levying and collecting taxes on persons in air transportation if they were so doing before June 1, 1972. The second amendment allowed the Secretary of Transportation an additional year to publish a national airport system plan.

## Background and Need

Prior to 1970, Federal participation in airport construction, maintenance, and development was severely limited by budgetary restrictions. All Federal monies had to be appropriated from general funds. In 1970 under the Airport and Airway Development Act, Public Law 91-258, an aviation trust fund was established. The primary money resources for the fund flows from an 8 percent excise tax on domestic tickets. This produces over $600 million a year and an additional $150 million a year is derived from air freight, fuel, and aircraft taxes and $3 tax on passengers destined for foreign countries. The trust fund promises a continuing, long-term, substantial, supportive role by the Federal Government. Before the trust fund was created, the Federal Aviation Administration and its predecessor had to turn down or postpone local and State programs even where the local or State funding was provided for because the Federal share was not available.

Now, at least in some situations, the reverse is true. The Federal resources are available or are expected to be available, but many States and subdivisions of States are having difficulty raising the money required for matching Federal grants. To meet its needs the airport authority in Evansville, Ind., established "a use and service charge" of $1 for each enplaning passenger leaving Dress Memorial Airport. Similarly, the State of New Hampshire passed a law requiring all interstate and intrastate "common carriers of passengers by hired aircraft on a regular schedule" using New Hampshire's five publicly owned airports to pay a service charge of $1 for each passenger enplaning (for aircraft of 12,500 pounds or less, the New Hampshire charge is 50 cents per passenger). On April 19, 1972, both the Indiana charges and the New Hampshire charges were upheld by the U. S. Supreme Court.

This form of raising money for airports was not considered in the congressional action which led to the Airport and Airway Development Act. Subsequent to the Supreme Court's decision to remove the barriers to this type of taxation, the following State or local authorities have imposed similar charges:

[p. 4] [Table listing seventeen jurisdictions with head taxes is omitted.]

. . . .

**A number of other jurisdictions are giving consideration to legislation to establish similar charges. As indicated earlier, the record before the committee varies from a flat permanent prohibition against charges assessed against the passengers and various recommendations with respect to increasing the Federal participation for aid to airports to the course which the committee chose, a temporary moratorium. Under the bill as reported by the committee, the responsibility for determining, identifying and measuring airport needs throughout the country is placed in the Civil Aeronautics Board. The investigation which the Board is expected to conduct should be broad in its scope. The committee does not expect the Board to limit its investigation and subsequent report and recommendations to the newly validated passenger charges.**

Rather, the Board is expected to consider these new charges and any other procedures for generating monies to support airports. This will, of course, include possible changes in the Federal share of airport funding. However, a distinction must be made between the broad scale of the Board's investigation and the narrow scope of the moratorium. The moratorium is aimed strictly at the type of passenger charges under consideration in the recent U. S. Supreme Court cases discussed herein. The moratorium applies to the entire United States but affects only those charges under consideration by the Supreme Court and the similar charges enacted, levied, and collected after the Court's decisions.

## Cost

Pursuant to rule 13, clause 7 of the Rules of the House of Representatives and in order to carry out the investigation contemplated in the legislation, the committee authorized to be appropriated sums not to exceed $100,000.

## Summary of the Committee: Amendment

### Moratorium On Air Passenger Fees

The first section prohibits any State or political subdivision from levying or collecting any charge on persons traveling in interstate, [p. 5] overseas, or foreign air transportation for a period of 18 months, beginning with the enactment of this Legislation.

### Investigation of Air Passenger Fees

**Section 2(a) requires the Civil Aeronautics Board (CAB) to conduct a complete investigation of State and local charges levied and collected on persons traveling in air transportation and to report the results of such investigation to the President and to the Congress within 12 months after the enactment of this legislation, together with any recommendations it deems appropriate.**

**Section 2(b) authorizes the CAB to obtain information from other Federal agencies to carry out the required investigation and requires such agencies to furnish the information so requested.**

Section 2(c) provides that the CAB may, in conducting the required investigation, hold hearings, issue subpenas, and receive evidence in the same manner as in the case of Board proceedings governed by section 1004 of the Federal Aviation Act of 1958. (See appendix.)

**118 CONG. REC. 27,812-29 (AUG. 10, 1972).**

## AIRPORT DEVELOPMENT ACCELERATION ACT OF 1972

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 954, S. 3755.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

Calendar No. 954 (S. 3755) a bill to amend the Airport and Airway Development Act of 1970 to increase the United States share of allowable project costs under such act; to amend the Federal Aviation Act of 1958 to prohibit certain State taxation of persons in air transportation, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia? The Chair hears none, and it is so ordered.

The Senate proceeded to consider the bill which had been reported from the committee with amendments . . .

. . . .

On page 8, after line 7, strike out:

"State Taxation

"Sec. 1113. No State (or political subdivision thereof) shall levy or collect a tax, fee, head charge or other charge, directly or indirectly, on persons traveling in air transportation or the carriage of persons in air transportation, or on the gross receipts derived therefrom, provided however, that nothing herein shall prohibit a State (or any political subdivision thereof) from the levy or collection of taxes other than those enumerated above, including property taxes, net income taxes, franchise taxes, and sales or use taxes on the sale of goods or services (other than on the sale of interstate air transportation or any portion thereof); and further provided, that nothing herein shall prohibit a State (or political subdivision thereof) owning

or operating an airport from the levy or collection of reasonable rental charges, landing fees and other service (measured on other than a per passenger basis)."

And, in lieu thereof, insert:

"State Taxation of Air Commerce

"Sec. 1113. (a) No State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) shall levy or collect a tax, fee, head charge, or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom.

"(b) Nothing herein shall prohibit a State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) from the levy or collection of taxes other than those enumerated in subsection (a) of this section, including property taxes, net income taxes, franchise taxes, and sales or use taxes on the sale of goods or services; and nothing herein shal[1] prohibit a State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) owning or operating an airport from levying or collecting reasonable rental charges, landing fees, and other service charges from aircraft operators for the use of airport facilities."

And, on page 10, after line 6, strike out:

"Sec. 1113. State taxation.".

And, in lieu thereof, insert:

"Sec. 1113. State taxation of air commerce."

Mr. CANNON. Mr. President, I am happy to bring before the Senate, S. 3755, the Airport Development Acceleration Act of 1972.

This bill provides a great new source of funds for airport development and improvement throughout the United States. The bill will reduce substantially the reliance on locally generated funds for airport development and will place a greater burden and responsibility on the United States to encourage, promote, and finance aviation facilities which are required in the National Air Transportation System.

The bill provides that the cost of this increased Federal participation will be borne by the users of the system, not the general taxpayer. The airlines, airline passengers and shippers and aircraft owners and operators all contribute to the development of the system by paying user taxes established in 1970. During the current fiscal year those taxes will bring in revenue of more than $750 million—S. 3755 provides that a greater share of the revenues from these taxes will filter down to local governments—airport sponsors—to meet local and national needs.

In accepting a greater Federal role and responsibility in airport development, the committee has also acted to prohibit local head taxation on passengers or on the carriage of passengers. We believe such taxation to be inimical to the development of a national system funded in large part by uniform Federal taxes. Currently some disagreement exists within the administration as to whether the committee action increasing Federal participation in airport development is warranted at this time. The committee however is convinced that it is.

Nonetheless, the committee views S. 3755 as an aviation development package—the components of which cannot be separated. We believe that if the prohibition on local head taxes was not a part of the total new program, there would be need to reevaluate the increased Federal funding for airport development projects called for in S. 3755. If local taxes on passengers and air carriers are allowed to proliferate nationally and are to become a major factor in the financing of local airport facilities, then there is obviously less need for a Federal airport development program.

If local taxes become a significant airport funding mechanism the public interest may well require a reduction in Federal user taxes and a diminution of Federal participation in airport development projects.

Therefore, by prohibiting State taxation on passengers or on air transportation, the committee has accepted greater responsibility for U. S. assistance believing that the two actions must be viewed together and that neither should stand alone without the other.

S. 3755 amends the Airport and Airway Development Act of 1970 and the Federal Aviation Act of 1958 so as to increase Federal financial assistance for airport development throughout the United States. It also prohibits the levying, by State and local governments, of passenger "head" taxes or use taxes on the carriage of persons in air transportation.

The legislation to provide increased Federal participation in airport development grants is required because of the serious financial difficulties being experienced by many local government agencies who bear the responsibility to build, operate and maintain the Nation's system of publicly owned airports. The funds required to increase the Federal share of airport development grants will come from the Airport and Airway Trust Fund established by the Airport and Airway Revenue Act of 1970. No new taxation or no expenditures of general U. S. funds will be required as a result of the legislation.

The bill prohibits any government agency other than the United States from establishing or levying a passenger head tax or use on the carriage of persons in air transportation. This prohibition will ensure that passengers and air carriers will be taxed at a uniform rate—by the United States—and that local "head" taxes will not be permitted to inhibit the flow of interstate commerce and the growth and development of air transportation.

. . . .

Section 7 of the bill adds a new section 1113 to the Federal Aviation Act of 1958 prohibiting any tax, fee, head

charge or other charge directly or indirectly, on persons traveling in air transportation or on the carriage of persons in air transportation or on the gross receipts derived therefrom. The bill allows, however, for the continuation of the levy and collection of other reasonable rental charges, landing fees, and other service charges for the use of airport facilities.

Summing up, quickly:

First. S. 3755 increased Federal grant in aid payments from 50 percent to 75 percent on airport airfield development projects at all but the 65 largest airports in the United States.

Second. Terminal area development related to the movement of passengers and their baggage through the airport will be eligible for 50 percent Federal funding. Currently, such development is not eligible for Federal assistance.

Third. Development required as a result of airport certification regulations or airport security regulations will be eligible for grant-in-aid assistance of 82-percent Federal participation. Currently, Federal participation for this type of project is limited to 50 percent.

Fourth. Total amounts available for airport development grants each year is increased from $280 to $420 million—an increase of $140 million per year to be financed entirely by user taxes.

Fifth. And, finally, S. 3755 provides a prohibition against levying or collecting State and local government passenger head taxes or taxes on the sale of air transportation.

Mr. President, the passage of this bill will have a significant impact on the financing of local government affairs. At nearly all of the Nation's almost 3,000 publicly owned and operated airports, the U. S. Government will assume 75 percent of the responsibility for development of new and improved airfield facilities. And this increased Federal support will not come from general tax dollars; it

will come from taxes on the users of the air transportation system.

The passage of this legislation will enable local government bodies, particularly smaller towns, counties, and communities to more easily fund other vital community programs such as schools, roads, sewers, police protection, and other services with money which might have been required for aviation facilities development. With greater Federal assistance to meet airport needs, scarce local funds will be available for other uses.

Mr. President, the Airport and Airway Development Act of 1970 was landmark legislation—for the first time it provided local governments a vast new source of funds to develop new and improved airports. At the same time it created a well-funded program to upgrade, modernize, and expand our air navigation facilities throughout the United States so as to improve the safety and efficiency of of the system. Mr. President, the act today is working well. With the changes proposed in S. 3755, the program will become even more responsive to the needs of the national system and to the needs of local governments who are partners with the Federal Government in developing a truly national and uniform air transportation system.

. . . .

Mr. PEARSON. Mr. President, I am pleased that the Airport Development Acceleration Act is before the Senate for debate today. This legislation contains urgently needed amendments to the Airport and Airways Development Act of 1970. (*Id.* at 27,815).

. . . .

Finally, Mr. President, the committee bill prohibits State and local taxation of air fares. The Commerce Committee and the Congress intended in 1970 to preempt the States and localities from levying such taxes, as taxation on air fares is one of the predominant sources of revenue for the trust fund. Recent Supreme Court decisions necessitate the clarification of this congressional policy determination.

If more than 500 localities—or even a significant proportion of this number—were unilaterally to levy taxes on airline passenger fares, there would result an unconscionable and unacceptable burden on interstate commerce. The national system of air service upon which tens of millions of Americans depend each year would become a hodgepodge of Balkanized assessments and levies against nonresident travelers whose business or leisure takes them across State lines. The committee bill prohibits State and local taxation of air fares, but this Federal preemption is carefully balanced by substantial increases in trust fund assistance for airport development and modernization. (*Id.* at 27,816).

. . . .

Mr. HUGHES. I do not want to agree to considering the amendment until we know what it is.

The PRESIDING OFFICER. The Chair will ask that the amendment be stated.

The amendment was read as follows:

On page 9, line 10, strike the period, insert a colon and the following:

"*Provided however,* That any State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) which levied and collected a tax, fee, head charge, or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom prior to May 21, 1970, shall be exempt from the provisions of this subsection until July 1, 1973."

The PRESIDING OFFICER. Is there objection to the Senator from New Hampshire offering his amendment and for the amendment to be considered? The Chair hears no objection, and it is so ordered.

The Senator from New Hampshire is recognized.

Mr. COTTON. I yield myself 3 minutes.

Mr. President, one of the purposes of the bill is to put an end to assessing "head fees" on passengers by airports. It does not preclude—and the distinguished chairman of the subcommittee (Mr. Cannon) will correct me if I am wrong—charges against aircraft operators for the use of airports, but not based on the number of passengers.

Mr. CANNON. Mr. President, if the Senator will yield, the Senator is correct. It does not do away with landing fees, charges for space rental in terminal buildings, things of that sort.

Mr. COTTON. I want to express my appreciation to the distinguished Senator from Nevada (Mr. Cannon) for agreeing to accept my amendment. In this particular case a special hardship would have occurred in the State of New Hampshire.

The State of New Hampshire has had a law charging air carriers a fee based upon the number of passengers enplaned long before enactment of the Airport and Airway Development Act on May 21, 1970. The New Hampshire law was first enacted in October 1959, and it was revised in August 1969 (chapter 391 of 1969 Laws of New Hampshire, amending N. H. Rev. Stat. Ann. sections 422:3, 43, 45). It has been sustained as constitutional by the New Hampshire Supreme Court and the Supreme Court of the United States.

My amendment unfortunately will not exempt New Hampshire indefinitely from this bill's prohibition on the head charge. It will do so only until July 1, 1973.

Now, New Hampshire happens to be in the unique situation where the fate of its air service depends entirely on the Civil Aeronautics Board's decisions as to whether it is going to require certificated air carrier service to our northern area which comprises about three-fourths of the entire State.

Presently, some of our airports either have no service or such minimal service that they have no income, and would have to close down now, or very shortly, if this bill passed without my amendment providing a grace period for the State of New Hampshire with respect to prohibiting its tax. My amendment simply provides a reprieve since after July 1, 1973, New Hampshire, too, will be prohibited from levying this particular charge, as are other States.

I am very grateful to the Senator from Nevada (Mr. Cannon) for agreeing to my amendment, which was a compromise since I wanted more for the people of my State.

Mr. President, I ask unanimous consent to add the name of my distinguished colleague from New Hampshire (Mr. McIntyre) as a cosponsor of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CANNON. Mr. President, I yield myself 1 minute.

I just want to say that I commend the distinguished Senator from New Hampshire for his diligent efforts in providing for the airports in his State and for trying to keep them in business. They have a very difficult time because of the lack of service or because of inadequate service provided to that area. He has long complained about and attempted to do something about it. This amendment will serve them until next year to come into compliance with the act. The amendment applies only to the State of New Hampshire; it is the only State that had a head tax being levied and collected at the time of the adoption of the Airport and Airway Development Act.

So I am happy to accept the amendment of the distinguished Senators from New Hampshire, and, hopefully, it will be adopted by this body. (*Id.* at 27,817).

. . . .

Mr. CHILES. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 10, between lines 2 and 3, insert the following: "(c) In the case of any airport operating authority which—

"(1) has an outstanding obligation to repay a loan or loans of amounts borrowed and expended for airport improvements;

"(2) is collecting, without air carrier assistance, a head tax on passengers in air transportation for the use of its facilities; and

"(3) has no authority to collect any other type of tax to repay such loan or loans,

the provisions of subsection (a) shall not apply to such authority until such authority has repaid such loan or loans, if the entire amount of such tax collected is applied to such repayment."

Mr. CHILES. Mr. President, I yield myself 4 minutes to discuss the amendment.

This amendment is very narrowly drawn to reflect a particular situation we have in the State of Florida, in that we have the Bradenton-Sarasota Airport, which had previously been collecting a head tax itself, not imposed by any air carrier, and had used that head tax to build permanent facilities, and had bonded that head tax to pay for those facilities.

This particular airport has no other taxing authority; it has no real property taxing authority, and the only source of money it has to repay the cost of those facilities is the head tax itself.

It is a $1 head tax, which the airport itself collects. This amendment would simply provide that they would not come under the provisions of the act until they had had an opportunity to pay off the $350,000 that they have borrowed, using this head tax to pay that off, and at that

time they would come under that provision, like the rest of the provisions.

I think they are clearly an exception. They are not like the Philadelphia case; they are not making the airlines collect it; they were charging it at a time when the courts said it was legal to so charge; and it is the only source of revenue this particular airport had to improve its facilities.

It has now improved its facilities. If we wipe out that head tax on that airport now, we would just throw them into bankruptcy, and I do not know what they would do about the collection of the bonds themselves, because they did obligate themselves to be able to pay for those facilities on the basis of the tax itself.

I am sure it would not run too long a period of time for them to be able to pay off the bonds, and I hope that the sponsors of the bill will see that this would be a narrow exception to the provisions of the bill, and will be willing to accept the amendment.

I reserve the remainder of my time.

Mr. CANNON. Mr. President, I yield myself 1 minute.

I am sympathetic to the Senator's problem, but if we are going to, on a case-by-case basis, permit airports around the country to impose a head tax, we had just as well not write any legislation on it at all.

We have taken some very strong steps here to help every airport in the country by making more Federal money available and by making money available for more purposes. Every airport in the country can benefit by this bill. Yet some of them apparently still want to collect the head tax. (*Id.* at 27, 818).

. . . .

We are trying to enact a nationwide rule. If we are going to exempt Sarasota, Fla., I am not sure that it

could be said that this is a nationwide rule, and we might run into a serious constitutional question. (*Id.* at 27, 819).

. . . .

Mr. COTTON. Mr. President, I yield myself 1 minute on the bill. Would the Senator from Florida (Mr. Chiles) be satisfied if an amendment could be agreed to which would give his airport time to make some of the arrangements the Senator from Nevada (Mr. Cannon) has suggested? For example, an amendment to continue the present fees until July 1 of next year, by which time the airport would have to find some other way to satisfy the obligation. I have no authority to agree to it myself, but I should like to know if he would feel that would be fair play?

Mr. CHILES. I would accept that. (*Id.*).

. . . .

The PRESIDING OFFICER. All time on this amendment has now been yielded back.

The question on agreeing to the amendment, as modified, of the Senator from Florida (Mr. Chiles).

The amendment was agreed to. (*Id.* at 27, 820).

. . . .

Mr. CANNON. Mr. President, it seems to me we are missing the basic point, which is that we are trying to get the airports out of the business of placing taxes on passengers. If we do not do something about that, we are going to have the biggest number of the maddest passengers we have ever seen in this country. (*Id.* at 27,825).

. . . .

MR. HARTKE . . . .

. . . .

Mr. President, this bill is before us today because of a law suit which involved the Evansville-Vanderburgh airport. That airport handles more than 329,000 passengers

each year. It serves not only Vanderburgh County, but 40 other counties in the surrounding area. To ask the residents of Vanderburgh County to bear through property tax the burden of operating a rapidly expanding airport which serves 40 other counties is to place an unfair and unjust burden on property owners in Vanderburgh County.

I oppose this legislative effort to overturn a decision of the U. S. Supreme Court. . . . (*Id.* at 27,826).

. . . .

So the bill (S. 3755) was passed, as follows:

. . . .

"State Taxation of Air Commerce

"Sec. 1113. (a) No State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) shall levy or collect a tax, fee, head charge, or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom:

*Provided, however,* That any State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) which levied and collected a tax, fee, head charge or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom prior to May 21, 1970, shall be exempt from the provisions of this subsection until July 1, 1973.

"(b) Nothing herein shall prohibit a State (the political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States

or political agencies of two or more States) from the levy or collection of taxes other than those enumerated in subsection (a) of this section, including property taxes, net income taxes, franchise taxes, and sales or use taxes on the sale of goods or services; and nothing herein shall prohibit a State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) owning or operating an airport from levying or collecting reasonable rental charges, landing fees, and other service charges from aircraft operators for the use of airport facilities.

"(c) In the case of any airport operating authority which—

"(1) has an outstanding obligation to repay a loan or loans of amounts borrowed and expended for airport improvements;

"(2) is collecting, without air carrier assistance, a head tax on passengers in air transportation for the use of its facilities; and

"(3) has no authority to collect any other type of tax to repay such loan or loans.

the provisions of subsection (a) shall not apply to such authority until July 1, 1973." (*Id.* at 27-829).

. . . .

**118 CONG. REC. 29,152-56 (AUG. 18, 1972).**

## AIR PASSENGER FEES—STATE AND LOCAL CHARGES

Mr. STAGGERS. Mr. Speaker, I ask unanimous consent that the bill (H.R. 14847) to amend the Airport and Airway Development Act of 1970 to increase from 50 to 75 percent the U. S. share of allowable project costs payable under such act; to amend the Federal Aviation Act of 1958 to prohibit State taxation of the carriage of persons in air transportation; and for other purposes, be considered in the House as in the Committee of the Whole House on the State of the Union.

. . . .

The Clerk read the bill, as follows:

. . . .

"Sec. 1113. No State (or any political subdivision thereof) shall levy or collect a tax, fee, or other charge, directly or indirectly, on persons traveling in air transportation or the carriage of persons in air transportation by any aircraft—

"(1) Operated by an air carrier certificated by an agency of the United States to perform air transportation,

"(2) operated by any person subject to regulation by an agency of the United States in the performance of air transportation, or

"(3) operating to or from any airport financed, in whole or in part, from Federal funds.".

. . . .

Mr. STAGGERS. Mr. Speaker, I move to strike the last word.

Mr. Speaker, the purpose of H.R. 14847 is to authorize the Civil Aeronautics Board to conduct a 1-year investigation as to the ramifications of air passenger fees exacted by State and local agencies. The CAB will determine the financial needs at the airports throughout the

country and make recommendations to the President and to the Congress as to the manner in which such needs should be met. To allow time for the CAB investigation, report, and recommendations and time for congressional review of the Board's action, the bill provides for an 18-month moratorium barring States and subdivisions of States from levying or collecting any per capita charges on air travelers.

The need for this legislation was brought to the fore by recent Supreme Court cases concerning air passenger charges enacted in New Hampshire and in Indiana. The cases were decided on April 19 of this year. There are now some 17 jurisdictions which have enacted per capita or enplaning charges on air passengers. They are listed on page 4 of the committee report. All except the Indiana and New Hampshire charges have been enacted since the Supreme Court decisions in April. The Committee on Interstate and Foreign Commerce feels very strongly that the moratorium is warranted so that these new charges can be evaluated both as to the merit of such charges and as to the need for insuring uniformity in fundraising for the support of airport construction, maintenance, and development.

. . . .

Mr. MATSUNAGA. Mr. Speaker, will the gentleman yield?

Mr. STAGGERS. I yield to the gentleman from Hawaii.

Mr. MATSUNAGA. I thank the distinguished chairman of the Committee on Interstate and Foreign Commerce for yielding.

For the purpose of establishing legislative history, and for clarifying the language which is used on page 3, beginning with line 13, I wish to ask the gentleman whether the word in line 16 "indirectly" is intended to cover user fees imposed on the basis of tonnage, as some airports do, as in the case of Hawaii.

Mr. STAGGERS. I would answer the gentleman in the negative, positively it does not affect that.

Mr. MATSUNAGA. Even though the tonnage may be based on the weight which may be increased by the number of passengers onboard?

Mr. STAGGERS. Not in any way. It was not intended to do this, and it specifically goes to "head tax" charges.

Mr. MATSUNAGA. I thank the gentleman from West Virginia for making it clear, because I am fearful that the word is rather broad and may be misinterpreted by those who are charged with enforcement of the act.

. . . .

Mr. GROSS. Mr. Speaker, is this to be considered as the Senate version on this subject or the House version?

Mr. STAGGERS. The House version.

Mr. GROSS. Certainly it is not the same as the original House bill.

Mr. STAGGERS. No. We explain it in the latter part of the bill that changes are made, setting forth and amending the title so as to read: A bill to provide for a moratorium on State taxation of the carriage of persons in air transportation, and for other purposes.

. . . .

Mr. BROYHILL of North Carolina. Mr. Speaker, I move to strike the last word.

Mr. Speaker, the situation is that a number of cities and towns around the country have been imposing these head taxes on passenger and it is growing by leaps and bounds. I am sure Members have been hearing from their airport authorities and the managers around the country.

What the committee is concerned about are two things.

First. It is going to result if it continues in a real hodgepodge. We do not know what the administrative burden would be of trying to collect on these taxes. They are certainly not uniform.

Second. Another thing we are concerned about is that the purpose, they say, of collecting these head taxes is so they can build capital improvements at their local airports, but we have evidence to show that these funds may not necessarily be spent for this purpose. They may be used to defray some of their present ongoing administrative costs. So the committee felt a moratorium was necessary at this time in order to give us a chance to come up with a sound long-range program.

No one denies the fact that the local communities which operate these airports certainly need funds to build the needed capital improvements and facilities.

If we are going to do this, I believe we should have a sound, long-range plan which is workable and which does not impose an undue administrative burden.

For this reason the committee has recommended to the House a moratorium and a study. This is not a complete prohibition. All it does is to put a moratorium on for 18 months for the collection and levying of these so-called head taxes. Hopefully by then we can come up with sound recommendations.

. . . .

Mr. STAGGERS. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Staggers moves to strike out all after the enacting clause of S. 3755 and to insert in lieu thereof the provisions of H. R. 14847, as passed.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title was amended so as to read:

The title was amended so as to read: "A bill to provide for a moratorium on State taxation of the carriage of persons in air transportation, and for other purposes."

A motion to reconsider was laid on the table.

A similar House bill (H.R. 14847) was laid on the table.

---

**118 CONG. REC. 30,116-17 (SEPT. 11, 1972).**

## AMENDMENT OF AIRPORT AND AIRWAY DEVELOPMENT ACT OF 1970

Mr. CANNON. Madam President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 3755.

The PRESIDING OFFICER (Mrs. Edwards) laid before the Senate the amendments of the House of Representatives to amend the Airport and Airway Development Act of 1970, as amended, to increase the United States share of allowable project costs under such Act; to amend the Federal Aviation Act of 1958, as amended, to prohibit certain State taxation of persons in air commerce, and for other purposes, which were to strike out all after the enacting clause, and insert: [the House amendments requiring a head tax moratorium].

. . . .

And amend the title so as to read: "An act to provide for a moratorium on State taxation of the carriage of persons in air transportation, and for other purposes."

Mr. CANNON. Madam President, I ask that the Senate disagree to the House amendments and request a conference with the House of Representatives on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. Magnuson, Mr. Cannon, Mr. Hart, Mr. Cotton, and Mr. Pearson conferees on the part of the Senate.

---

**118 CONG. REC. 30,511 (SEPT. 13, 1972).**

APPOINTMENT OF CONFEREES ON S. 3755, AMENDING AIRPORT AND AIRWAY DEVELOPMENT ACT OF 1970 AND FEDERAL AVIATION ACT OF 1958

Mr. STAGGERS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (S. 3755) to amend the Airport and Airway Development Act of 1970, as amended, to increase the U. S. share of allowable project costs under such act; to amend the Federal Aviation Act of 1958, as amended, to prohibit certain State taxation of persons in air commerce, and for other purposes, with House amendments thereto, insist on the House amendments, and agree to the conference asked by the Senate.

The SPEAKER. Is there objection to the request of the gentleman from West Virginia? The Chair hears none, and appoints the following conferees: Messrs. Staggers, Jarman, Dingell, Harvey, and Kuykendall.

---

HOUSE OF REPRESENTATIVES

92d Congress
*2d Session*

Report
No. 92-1543

# AIRPORT DEVELOPMENT ACCELERATION ACT OF 1972

October 5, 1972.—Ordered to be printed

Mr. Staggers, from the committee of conference, submitted the following

## CONFERENCE REPORT

[To accompany S. 3755]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 3755) to amend the Airport and Airway Development Act of 1970, as amended, to increase the U. S. share of allowable project costs under such act; to amend the Federal Aviation Act of 1958, as amended, to prohibit certain State taxation of persons in air commerce, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

. . . .

[p. 2] . . . .

*"State Taxation of Air Commerce*

*"Sec. 1113. (a) No State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the terri-*

*tories or possessions of the United States or political agencies of two or more States) shall levy or collect a tax, fee, head charge, or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling* [p. 3 ] *in air commerce or on the sale of air transportation or on the gross receipts derived therefrom; Provided, however, That any State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) which levied and collected a tax, fee, head charge, or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom prior to May 21, 1970, shall be exempt from the provisions of this subsection until July 1, 1973.*

"(*b*) *Nothing herein shall prohibit a State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) from the levy or collection of taxes other than those enumerated in subsection (a) of this section, including property taxes, net income taxes, franchise taxes, and sales or use taxes on the sale of goods or services; and nothing herein shall prohibit a State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) owning or operating an airport from levying or collecting reasonable rental charges, landing fees, and other service charges from aircraft operators for the use of airport facilities.*

"(*c*) ***In the case of any airport operating authority which—***

> "(*1*) ***has an outstanding obligation to repay a loan or loans of amounts borrowed and expended for airport improvements;***

*"(2) is collecting, without air carrier assistance, a head tax on passengers in air transportation for the use of its facilities; and*

*"(3) has no authority to collect any other type of tax to repay such loan or loans,*

*the provisions of subsection (a) shall not apply to such authority until July 1, 1973.".*

*(b) That portion of the table of contents contained in the first section of such Act which appears under the center heading "Title XI—Miscellaneous" is amended by adding at the end thereof the following:*

*"Sec. 1113. State taxation of air commerce.".*

An the House agree to the same.

That the House recede from its amendment to the title of the Senate bill.

Harley O. Staggers,
John Jarman,
John D. Dingell,
James Harvey,
Dan Kuykendall,

*Managers on the Part of the House.*

Warren G. Magnuson,
Howard W. Cannon,
Philip A. Hart,
Norris Cotton,
James B. Pearson,

***Managers on the Part of the Senate.***

**118 CONG. REC. 35,116 (OCT. 11, 1972).**

CONFERENCE REPORT ON S. 3755, AIRPORT DEVELOPMENT ACCELERATION ACT OF 1972

Mr. STAGGERS. Mr. Speaker, I call up the conference report on the bill (S. 3755) to amend the Airport and Airway Development Act of 1970, as amended, to increase the U. S. share of allowable project costs under such act; to amend the Federal Aviation Act of 1958, as amended, to prohibit certain State taxation of persons in air commerce, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

. . . .

Mr. KYL. Can the gentleman from West Virginia tell the House what provision is now in the bill relative to the local collection of taxes on passengers using the airports?

Mr. STAGGERS. They will be prohibited under the bill. In lieu of that we have raised the assessments and the moneys to each one of the airports from 50 to 75 percent, local participation, and raised the amount of money in the fund that can be used at these airports.

. . . .

The conference report was agreed to.

A motion to reconsider was laid on the table.

---

**118 CONG. REC. 35,860 (OCT. 13, 1972).**

AIRPORT DEVELOPMENT ACCELERATION ACT OF 1972—CONFERENCE REPORT

Mr. CANNON. Mr. President, I submit a report of the committee of conference on S. 3755, and ask for its immediate consideration.

. . . .

Mr. CANNON. Mr. President, the House of Representatives has adopted the conference report on S. 3755. I ask unanimous consent that the report together with the explanation of the conference agreement be printed in the Record at this point.

There being no objection, the report and the explanation were ordered to be printed in the Record, as follows:

. . . .

Sec. 7. (a) Title XI of the Federal Aviation Act of 1958 is amended by adding at the end thereof the following new section:

"State Taxation of Air Commerce

"Sec. 1113. (a) No State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) shall levy or collect a tax, fee head charge, or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom: *Provided, however,* That any State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possession of the United States or political agencies of two or more States) which levied and collected a tax, fee, head charge, or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom prior to May 21, 1970, shall be exempt from the provisions of this subsection until July 1, 1973.

"(b) Nothing herein shall prohibit a State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) from the levy or

collection of taxes other than those enumerated in subsection (a) of this section, including property taxes, net income taxes, franchise taxes, and sales or use taxes on the sale of goods or services; and nothing herein shall prohibit a State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) owning or operating an airport from levying or collecting reasonable rental charges, landing fees, and other service charges, from aircraft operators for the use of airport facilities.

"(c) In the case of any airport operating authority which—

"(1) has an outstanding obligation to repay a loan or loans of amounts borrowed and expended for airport improvements;

"(2) is collecting, without air carrier assistance, a head tax on passengers in air transportation for the use of its facilities; and

"(3) has no authority to collect any other type of tax to repay such loan or loans.

the provisions of subsection (a) shall not apply to such authority until July 1, 1973.".

*State Taxation of Air Commerce*

Senate bill

**Section 7 of the Senate bill provided for a permanent prohibition against the levy or collection of a tax or other charge on persons traveling in air commerce or on the carriage of persons so traveling or on the sale of air transportation or on the gross receipts derived therefrom by any State or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, territories or possessions of the United States or political agencies of two more States. There**

were two exemptions from this prohibition. First, any State which levied and collected such charges before May 21, 1970, would be exempt from the prohibition until July 1, 1973. Second, any airport operating authority which (1) has an outstanding obligation to repay money borrowed and expended for airport improvements, (2) has collected a head tax on air passengers, without carrier assistance, for the use of its facilities, and (3) has no authority to collect any other type of tax to repay the loan, would be exempt from the prohibition until July 1, 1973.

The Senate bill also provided that the prohibition would not extend to the levy or collection of other taxes, such as property taxes, net income taxes, franchise taxes, and sales or use taxes, nor to the levy or collection of other charges such as reasonable rental charges, landing fees, and other service charges from aircraft operators for the use of aircraft facilities.

House amendment

The first section of the House amendment provided for an 18-month moratorium on the levy or collection of any tax, fee, or other charge on persons traveling in air transportation or on the carriage of persons in air transportation.

Section 2 of the House amendment provided for an investigation of fees and charges levied and collected by States on persons traveling in air transportation in order to determine the effect of such charges on air transportation in the United States. The investigation was to be conducted by the Civil Aeronautics Board, which was required to report the results of the investigation to the President and to the Congress, together with its recommendations, not later than twelve months after the date of enactment of this legislation.

The House amendment authorized an appropriation of $100,000 to carry out the investigation.

Conference substitute

The conference substitute is the same as the Senate bill.

. . . .

Mr. CANNON. . .

. . . .

Notwithstanding my disappointment on that facet of the conference agreement, the conference report represents an excellent piece of legislation and is a great step forward in providing more Federal assistance in developing the Nation's air transportation system without burdening passengers with locally imposed discriminatory taxation.

Mr. President, I urge the Senate to unanimously approve the conference report on S. 3755 so that it will be sent to the White House without delay. We expect the President to approve the bill, particularly because of the important Federal commitment to help local communities finance security programs to thwart the threat of air piracy, violence, and terrorism.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The report was agreed to.

Mr. CANNON. Mr. President, I ask unanimous consent that the conference report not be printed.

The PRESIDING OFFICER. Without objection, it is so ordered.

. . . .

**118 CONG. REC. 37,202-03 (OCT. 18, 1972).**

BILLS DISAPPROVED AFTER SINE DIE ADJOURNMENT

The President announced his disapproval of the following bills with memorandums of disapproval as follows:

. . . .

Airport Development Acceleration Act

(S. 3755)

This bill would increase Federal expenditures and raise percentage participation in categorical grant programs with specific and limited purposes. I believe this would be inconsistent with sound fiscal policy. Airport development funds have been almost quadrupled since 1970 under this administration.

---

**119 CONG. REC. 213-16 (JAN. 4, 1973).**

By Mr. CANNON (for himself and Mr. Magnuson):

S. 38. A bill to amend the Airport and Airway Development Act of 1970, as amended, to increase the U. S. share of allowable project costs under such act; to amend the Federal Aviation Act of 1958, as amended, to prohibit certain State taxation of persons in air commerce, and for other purposes. Referred to the Committee on Commerce.

---

By Mr. CANNON (for himself and Mr. Magnuson, and Mr. Robert C. Byrd):

S. 39. A bill to amend the Federal Aviation Act of 1958 to provide a more effective program to prevent aircraft piracy and for other purposes. Referred to the Committee on Commerce.

Mr. CANNON. Mr. President, I send to the desk two bills for appropriate reference dealing with pressing civil

aviation problems—both bills passed the Senate during the 92d Congress, however, neither was enacted into law. Mr. President, following my introductory remarks I ask unanimous consent that the two bills be printed in the Record.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibits Nos. 1 and 2.)

. . . .

The Airport Acceleration Development Act of 1973

Mr. President, the second bill I introduce today [S. 38] is titled "The Airport Acceleration Development Act of 1973." This bill was passed by the Senate in August of 1972, a similar version was later passed by the House and Senate-House conferees agreed on a compromise measure in October. After adoption of the conference report, the bill was sent to the White House.

Mr. President, acting after Congress had adjourned, President Nixon vetoed this most important bill without giving Congress the opportunity to override his action—the result was the failure of any legislative action in this vital area. I assure my colleagues that the bill I introduce today—which is nearly identical to the version approved by the Senate on August 10—will be the subject of speedy action by the Senate Commerce Committee and will be before the Senate for consideration in just a few weeks. I have been assured by my colleagues in the House that the other body will also take early action on this matter in hopes of sending it to the White House again early in the session.

This bill provides a great new source of funds for airport development and improvement throughout the United States. The bill will reduce substantially the reliance on locally generated funds for airport development and will place a greater burden and responsibility on the U. S. Gov-

ernment to encourage, promote and finance aviation facilities which are required in the national air transportation system.

The bill provides that the cost of this increased Federal participation will be borne by the users of the system, not the general taxpayer. The airlines, airline passengers and shippers, and aircraft owners and operators all contribute to the development of the system by paying user taxes established in 1970. During the current fiscal year those taxes will filter down to local governments—airport sponsors—to meet local and national needs.

In providing for a greater Federal role and responsibility in airport development the bill also prohibits local head taxation on passengers or on the carriage of passengers. The Commerce Committee, and I believe the Senate, believes such taxation to be inimical to the development of the national system funded in large part by uniform Federal taxes.

My bill amends the Airport and Airway Development Act of 1970 and the Federal Aviation Act of 1958 so as to increase Federal financial assistance for airport development throughout the United States. It also prohibits the levying, by State and local governments, of passenger "head" taxes or use taxes on the carriage of persons in air transportation.

The legislation to provide increased Federal participation in airport development grants is required because of the serious financial difficulties being experienced by many local government agencies who bear the responsibility to build, operated, and maintain the Nation's system of publicly-owned airports. The funds required to increase the Federal share of airport development grants will come from the airport and airway trust fund established by the Airport and Airway Revenue Act of 1970. No new taxation or no expenditure of general U. S. funds will be required as a result of the legislation.

The bill prohibits any government agency other than the United States from establishing or levying a passenger

head tax or use tax on the carriage of persons in air transportation. This prohibition will insure that passengers and air carriers will be taxed at a uniform rate—by the United States—and that local "head" taxes will not be permitted to inhibit the flow of interstate commerce and the growth and development of air transportation.

Mr. President, I will briefly review the provisions of this bill. (*Id.* at 214).

. . . .

Section 7 of the bill adds a new section 1113 to the Federal Aviation Act of 1958 prohibiting any tax, fee, head charge, or other charge directly or indirectly, on persons traveling in air transportation or on the carriage of persons in air transportation or on the gross receipts derived therefrom. The bill allows, however, for the continuation of the levy and collection of other reasonable rental charges, landing fees, and other service charges for the use of airport facilities.

Summing up, quickly:

First. The bill increases Federal grant-in-aid payments from 50 percent to 75 percent on airport airfield development projects at all but the 22 largest airports in the United States.

Second. Terminal area development related to the movement of passengers and their baggage through the airport will be eligible for 50-percent Federal funding. Currently, such development is not eligible for Federal assistance.

Third Development required as a result of airport certification regulations or airport security regulations will be eligible for grant-in-aid assistance of 82-percent Federal participation. Currently, Federal participation for this type of project is limited to 50 percent.

Fourth. Total amounts available for airport development grants each year is increased from $280 million to $420 million—an increase of $140 million per year to be financed entirely by user taxes.

Fifth. And finally, S. 3755 provides a prohibition against levying or collecting State and local government passenger head taxes or taxes on the sale of air transportation.

Mr. President, the passage of this bill will have a significant impact on the financing of local governmental affairs. At nearly all of the Nation's almost 3,000 publicly owned and operated airports, the U.S. Government will assume 75 percent of the responsibility for development of new and improved airfield facilities. And this increased Federal support will not come from general tax dollars; it will come from taxes on the users of the air transportation system.

The passage of this legislation will enable local government bodies, particularly smaller towns, counties, and communities to more easily fund other vital community programs such as schools, roads, sewers, police protection, and other services with money which might have been required for aviation facilities development. With greater Federal assistance to meet airport needs, scarce local funds will be available for other uses.

Mr. President, the Airport and Airway Development Act of 1970 was landmark legislation; for the first time it provided local governments a vast new source of funds to develop new and improved airports. At the same time it created a well-funded program to upgrade, modernize, and expand our air navigation facilities throughout the United States so as to improve the safety and efficiency of the system. Mr. President, the act today is working well. With the changes proposed in my bill the program will become even more responsive to the needs of the national system and to the needs of local governments who are partners with the Federal Government in developing a truly national and uniform air transportation system.

Exhibit 1

S. 38

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Airport Development Acceleration Act of 1973". (*Id.* at 215).

. . . .

"State Taxation of Air Commerce

"Sec. 1113. (a) No State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) shall levy or collect a tax, fee, head charge, or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom: *Provided, however,* That any State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) which levied and collected a tax, fee, head charge, or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom prior to May 21, 1970, shall be exempt from the provisions of this subsection until July 1, 1973.

"(b) Nothing herein shall prohibit a State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) from the levy or collection of taxes other than those enumerated in subsection (a) of this section, including property taxes, net income taxes, franchise taxes, and sales or use taxes on the sale of goods or services; and nothing herein shall prohibit a State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) owning or operating an airport from levying or collecting reasonable rental charges, landing fees, and other service charges from aircraft operators for the use of airport facilities.

"(c) In the case of any airport operating authority which—

"(1) has an outstanding obligation to repay a loan or loans of amounts borrowed and expended for airport improvements;

"(2) is collecting, without air carrier assistance, a head tax on passengers in air transportation for the use of its facilities; and

"(3) has no authority to collect any other type of tax to repay such loan or loans,

the provisions of subsection (a) shall not apply to such authority until July 1, 1973."

(b) That portion of the table of contents contained in the first section of such Act which appears under the center heading "TITLE XI—MISCELLANEOUS" is amended by adding at the end thereof the following: "Sec. 113. State taxation of air commerce.". (*Id.* at 216).

SENATE

92nd Congress
*1st Session*

Report
No. 93-12

# AMENDING THE AIRPORT AND AIRWAY DEVELOPMENT ACT OF 1970 AND THE FEDERAL AVIATION ACT OF 1958

February 1, 1973.—Ordered to be printed

MR. CANNON, from the Committee on Commerce, submitted the following

## REPORT

[To accompany S. 38]

The Committee on Commerce, to which was referred the bill (S. 38) to amend the Airport and Airway Development Act of 1970 to increase the United States share of allowable projects costs under such Act; to amend the Federal Aviation Act of 1958 to prohibit certain state taxation of persons in air transportation, and for other purposes having considered the same, reports favorably thereon with one technical amendment and recommends that the bill (as amended) do pass.

"Text of S. 38, as Reported"

The amendment is indicated as follows: Omit the part in brackets and insert the part printed in italic.

A BILL To amend the Airport and Airway Development Act of 1970, as amended, to Increase the United States share of allowable project costs under such Act, to amend the Federal Aviation Act of 1958, as amended, to prohibit certain State taxation of persons in air commerce, and for other purposes

***Be it enacted by the Senate and House of Representatives of the United States of America in Congress as-***

*sembled,* That this Act, may be cited as the "Airport Development Acceleration Act of 1973".

. . . .

[p. 3] . . . .

"State Taxation of Air Commerce

"Sec. 1113. (a) No State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) shall levy or collect a tax, fee, head charge, or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom: *Provided, however,* That any State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) which levied and collected a tax, fee, head charge, or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom prior to May 21, 1970, shall be exempt from the provisions of this subsection until July 1, 1973.

"(b) Nothing herein shall prohibit a State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) from [p. 4] the levy or collection of taxes other than those enumerated in sub-section (a) of this section, including property taxes, net income taxes, franchise taxes, and sales or use taxes on the sale of goods or services and nothing herein shall prohibit a State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the

Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) owning or operating an airport from levying or collecting reasonable rental charges, landing fees, and other service charges from aircraft operators for the use of airport facilities.

"(c) In the case of any airport operating authority which—

"(1) has an outstanding obligation to repay a loan or loans in amounts borrowed and expended for airport improvements;

"(2) is collecting, without air carrier assistance, a head tax on passengers in air transportation for the use of its facilities; and

"(3) has no authority to collect any other type of tax to repay such loan or loans.

the provisions of subsection (a) shall not apply to such authority until July 1, 1973."

(b) That portion of the table of contents contained in the first section of such Act which appears under the center heading "Title XI—Miscellaneous" is amended by adding at the end thereof the following:

"Sec. 1113. State taxation of air commerce.".

Sec. 8. Section 12(a) of the Airport and Airway Development Act of 1970 (49 U. S. C. 1712), is amended by striking out the words "two years" in the first sentence thereof and by inserting in lieu thereof "three years".

## Purpose

S. 38 amends the Airport and Airway Development Act of 1970 and the Federal Aviation Act of 1958 to increase Federal financial assistance for airport development throughout the United States. It also prohibits the levying, by State and local governments, of passengers "head" taxes or use taxes on the carriage of persons in air transportation.

The legislation to provide increased Federal participation in airport development grants is required because of the serious financial difficulties being experienced by many local government agencies who bear the responsibility to build, operate and maintain the nation's system of publicly-owned airports. The funds required to increase the Federal share of airport development grants will come from the Airport and Airway Trust Fund established by the Airport and Airway Revenue Act of 1970. The fund is funded from revenues from user taxes on aviation-system users and contains and will contain adequate revenues to cover the cost of the increased Federal assistance. No new taxation and no expenditure of general U. S. funds will be required as a result of the legislation.

The bill prohibits any government agency other than the United States from establishing or levying a passenger head tax or use tax on the carriage of persons in air transportation. This prohibition will ensure that passengers and air carriers will be taxed at a uniform rate—by the United States—and that local "head" taxes will not be permitted to inhibit the flow of interstate commerce and the growth and development of air transportation.

[p. 5] Section-by-Section Analysis

. . . .

[ p. 6] . . . .

Section 7 of the bill adds a new Section 1113 to the Federal Aviation Act of 1958 prohibiting any tax, fee, head charge or other charge, directly or indirectly, on persons traveling in air transportation or on the carriage of persons in air transportation or on the gross receipts derived therefrom. The bill allows, however, for the continuation of the levy and collection of reasonable rental charges, landing fees, and other service charges for the use of airport facilities. However, State jurisdictions meeting certain criteria established in the bill are given until July 1, 1973 to comply with the prohibition.

Finally, Section 7(b) of the bill amends the table of contents of the Federal Aviation Act to reflect the addition of the new Section 1113.

The only amendment to S. 38 adopted by the Committee was a technical one which corrected a drafting error made when the bill was introduced. In all other respects the bill is the same as introduced and very similar to S. 3755 as passed by the Senate on August 10, 1972.

. . . .

[p. 11] . . . .

S. 38 contains a prohibition on State taxation of passengers or on the carriage of passengers in air transportation. This prohibition will [p. 12] potentially deprive airport operators from a new and attractive source of revenue with which to support their airports—namely the passenger head tax. This provision will be discussed later but the Committee points out here that in denying government agencies potential revenues from passenger head taxes, it is also responding to the local need for greater Federal assistance in airport grants.

. . . .

[p. 17] . . . .

## (4) PROHIBITION OF STATE AND LOCAL TAXATION

S. 38 prohibits a new, inequitable, and potentially chaotic burden of taxation on the nearly 200 million persons who use air transportation each year. The legislation prohibits the levying of state or local head taxes, fees, or charges either on passengers or on the carriage of such passengers in interstate commerce. The provision is in response to a situation which has been brought about by an April 19, 1972 Supreme Court decision in *Evansville-Vanderburgh Airport Authority District et al. v. Delta Airlines, Inc. et al.,* upholding passenger head taxes enacted by New Hampshire and by Evansville, Indiana, for "aviation-related purposes". While this decision has invited state and local governments to enact head taxes

or fees on air travelers, the Court decision does not provide adequate safeguards to prevent undue or discriminatory taxation.

The Court upheld the validity of a city-imposed "use and service charge" of $1 for each enplaning commercial passenger at Evansville, Indiana, and a New Hampshire state law levying $1 charge for a passenger on large commercial airlines, and 50¢ a passenger charge on smaller planes. In Evansville, the money, to be collected directly from passengers by the airlines, was earmarked for maintenance and improvements at the airport. In New Hampshire, the state fixed the charge directly on the airlines, with half of the revenue to go into the state aeronautical fund and the balance going to the airport authority. The Court, in essence, ruled that states and cities could constitutionally impose a reasonable charge on interstate and intrastate air passengers in order to underwrite airport operational and development costs. Yet, the decision did not sufficiently define the ruling as, for example, what constitutes a reasonable charge, or just how far a state or municipality could go in levying head taxes. Obviously, the decision raised more questions than it answered, and the result was predictable.

It is significant that revenues which would be derived from some of these local or state head taxes would not be earmarked for airport development, but would be used to gain financial windfalls. The most blatant example of this is Philadelphia which imposed a $2 head tax on enplaning as well as deplaning passengers, with the funds going, unearmarked for airport development, into the cities' general fund. So the head tax has already grown from a 50¢ charge for air commuter passengers in New Hampshire to a $4 charge for a Philadelphia round-trip.

Recent experience with the Philadelphia tax is indicative of the chaos which such local taxation works on the national air transportation system. The head tax brings on confusion, delay, anger and resentment and cuts against the grain of the traditional American right to travel among the States unburdened by travel taxes. Two newspaper accounts are printed below describing the

situation created by the Philadelphia head tax which became effective July 1, 1972:

[p. 18] [From the Philadelphia Inquirer, July 2, 1972]

Thousands Balk at Airport Tax; Long Lines Delay Flights Out

(By Jan Schaffer)

Departing flights at Philadelphia International Airport were delayed as long as one hour Saturday as thousands of passengers refused to pay the city's new $2 one-way, $4 round-trip transit tax.

"It's chaos down here. It hasn't been this bad since Christmas," said TWA customer services agent Bea Lutz as crowds of travelers chose to fill out lengthy refusal forms rather than pay the new levy.

"We can't even see the end of the line from behind the counter up here."

After the tax went into effect at midnight Saturday, some airlines reported that up to 50 percent of their customers were refusing to pay.

"We had special refusal vouchers printed up and we had to get more printed today," said TWA public relations director Robert Hall. "I'd say 30 to 40 percent are refusing to pay."

At Allegheny Airlines counter, Tom Fitzmorris, assistant passenger services manager, said "40 to 50 percent" of his customers were filling out forms rather than handing over the $2.

United Airlines reported a 10 percent refusal rate and Eastern about 20 percent.

"This city is really scratching for your last buck when they start taxing someone who's just passing through," said one airport user, Phil Gasser, who was en route home to Waukesha, Wis.

One traveler heading for Los Angeles said the delays caused by attempting to collect the money from disgruntled passengers caused him to miss his plane.

"We had to stand in line two times," he said.

Although the airlines had sought a preliminary injunction against collection of the tax, Common Pleas Judge Frank J. Montemuro refused their plea last week.

At the same time, however, he said the city—which estimated it will gain $14 million annually through receipt of the levy—cannot impose penalties on airlines if they fail to collect all the taxes due.

---

[From the Philadelphia Evening Bulletin, July 1, 1972]

Grumbling Is the Order of the Day as $2 Airport Head Tax Hits Phila.

(By Douglas D. Gill and Ned Warwick)

Philadelphia's new $2 tax on passengers arriving and departing at Philadelphia International Airport went into effect today.

[p. 19] The tax was greeted by the same grumbling that has greeted new taxes since governments first imposed them.

"An airport head tax? That's ridiculous," said Malcolm Fry, of 520 Acorn St., Roxborough, as he and his wife, Lois, arrived at 12:35 A. M. on an Eastern Airlines flight from Miami.

Fry and other passengers whose flights took off before the tax was imposed at midnight didn't have to pay the new levy.

But the new charge was made on tickets for flights leaving after midnight, regardless of whether the tickets were bought before the tax went into operation.

## Pay Again?

One of the first to pay the tax was Sam Palmieri of Stratford, N. J., who bought two round-trip tickets for a flight July 6 to San Juan, P. R., for himself and his wife. He paid $280 for the tickets and $4 for two departure taxes.

Palmieri asked the American Airlines ticket seller, "How do I get back into Philadelphia? Will I have to pay again?"

"Oh Lord, yes, you will," she said. "I forgot to put that onto your bill. Oh well, I suppose somebody will ask you for it when you get back. Don't worry about it until then."

"Hell, I just won't come back," Palmieri said.

Dave Strode of 35 Evergreen lane, Haddonfield, N. J., was in line behind Palmieri and bought a one-way ticket to Atlanta. He's a student at Georgia Tech and says he flies to Georgia and back about nine times a year.

## $40 a Year

"That means at $4 each time, I'll be paying almost $40 to Philadelphia every year," he said. "They don't give me anything for it."

City Council adopted the new levy by a 15-0 vote May 25. Because of Mayor Rizzo's campaign promise not to raise taxes, city officials have billed the new tax as a "user charge" instead of a tax.

"Whatever they call it, I think it stinks," said Robert Maler, a ticket agent for American Airlines.

## Airport a Mess

"Nobody would mind paying this tax if they had a decent airport to come to," he said. "As it is, it's a mess. Temporary wood and cardboard partitions are everywhere and have been for as long as I can remember. Trash is all over the floor. Just look at it. This airport ist he

most inconvenient of any I've ever been in. We're all going to have to start apologizing for the city.

Donna Iacino, who was behind the American counter with Maier, said, "Why doesn't the city have its own agents down here to collect it themselves? Why should we do their work for them. They're not paying us any salary."

[p. 20] James Jensen of Wilmington, a chemist, told about the tax by a report, said, "Oh my God! I've got five children with me. What am I going to do now?"

### 7 to Chicago

He and his wife and family were flying to Chicago (sic) Trans World Airlines on their way to Appleton, Wis., for a vacation.

"I'll just have to refuse to pay the tax and worry about it later," Jensen said.

Airlines provided passengers with refusal forms if they did not wish to pay the tax. The airlines are required to fly passengers whether they pay the tax or not. In such cases it will be up to the city to collect the tax. The forms list the refuser's name and address.

### At Departure Gates

TWA collected the tax at the departure gates. The other airlines collected it at the ticket counters.

"I'm not against the head tax," Jensen said. "It's just that I wish we had had a little former warning."

Alvin White, 50, of 5719 N. 19th St. said, "I hate it like hell. Boy do I hate it. I realize the airport needs improvement, but this is a heck of a way to raise money. I think it's going to impede traffic in and out of Philadelphia."

White, an engineer, was flying a TWA plane to Kansas City.

Refusal Forms

Don Quinn, customer service agent for TWA, said seven of 31 passengers for a Pittsburgh flight filled out refusal forms.

John Greto, an American Airlines ticket agent, said 10 passengers had filled out refusal forms by 8 A. M.

"You have the right to refuse to pay this head tax." Ray Curran, an Allegheny Airlines ticket agent, told Leo Curran, 26 (no relation), of Richboro, Bucks County.

"I don't know," Leo said. "Should I fill out the form? What will happen to me?"

"I'm not really sure," the ticket agent said. "I guess they'll probably come after you to collect it."

"Fill Out Form"

Leo's wife, Dorothy, 25, said, "Fill out that form. We're not going to pay any $12 extra." Leo, a teacher, followed his wife's instructions and filled out the form. He, his wife and his mother were flying to Boston.

---

In 1970, this Committee and Congress passed the Airport and Airway Development Act in order to provide for urgently needed improvements in the national air transportation system. An Aviation Trust Fund was created, along with a variety of user charges to assure [p. 21] adequate and sustained funding. An 8 percent charge was levied on domestic passengers, and $3 per person on international trips. Congress thereby established a uniform national program of taxation and funding for airport improvements. This Committee never intended that air travelers would be subject to state and local head taxes as well as to national user charges. The Committee believed there was no danger of this because the basic constitutional guarantee of a citizen's right to unhindered interstate travel, and a U. S. Supreme Court decision which had prevailed since 1867, indicated that such taxes

could not be constitutionally imposed. It is unfair that this is happening now since state and local head taxes constitute an inequitable, double burden of taxation on air passengers. Obviously, this runs counter to the whole concept of uniformity underlying the Airport and Airways Development Act, and the maintenance of a national air transportation system.

The Air Transport Association of America, the airlines trade group informs the Committee that as of January 30, at least 31 jurisdictions have enacted passenger charges and proposals for such charges are pending in many other localities. Below is a table, supplied by the Association, indicating the jurisdictions charging head taxes, the amount, the effective date and the source of collection.

[Table omitted listing thirty-one jurisdictions with head taxes.]

The airlines testified that in Mobile, Ala., where they have been collecting a head tax, one thing is clear—it makes people mad. It takes time to process a passenger; the carriers say that collecting the head tax adds at least 45 seconds per customer. Such difficulty in a smaller station is nothing compared to the congestion that could take place at New York, or some other large terminal. These processing delays concern the Committee. People don't like taxes, in general, and head taxes are particularly annoying.

[p. 22] Whether the passenger pays the head tax, or whether it is absorbed by the airlines, the end result is to raise the cost of air travel.

If the passenger must pay a local head tax, it adds directly to the cost of his trip. And if head taxes are absorbed by the carriers, where law permits, because of the cost and difficulty of collection, or even refusal of passengers to pay, it still will lead to increased air travel costs. If the carriers had to absorb $1 for every air passenger carried last year, that would amount to $170 million. The airlines could not reasonably be expected to bear such a

burden. In the end, a fare increase would have to be implemented. Thus, the air passenger loses either way on state and local hear taxes. In addition, there would come a point when this added cost could make air travel uneconomical for some people, and thus inhibit the growth of the air transportation system, particularly in short-haul markets.

The head tax imposes a flat rate on passengers, regardless of the distance traveled by the passenger. Therefore, the "short haul" passenger, paying a $1 tax has the price of his ticket increased about 10% while a transcontinental passenger's ticket increases less than 1%. Since the head tax substantially increasts the cost of a short haul flight, a person may turn to other modes of transportation. We believe that the addition in Philadelphia of $4 to the cost of a round trip fare will have this effect, causing severe problems for the substantial local and commuter service there. The diversion of this traffic from such air carriers would have a damaging effect on service to many smaller communities.

One commuter airline testified before the Committee that some short-haul airline fares have increased by more than 20% as a result of the Philadelphia tax. Certainly such taxation is a burden on air transportation and will serve to inhibit the growth and usefulness of air transport for travel involving short distances.

Quite clearly, if head taxes are to be used for non-aviation purposes, or for programs which don't benefit the airport system where it is collected, such taxes are not equitable. In addition, state and local head taxes to raise funds for airport development can be precluded, for they should not be necessary. Air passengers are already being charged sufficiently at the Federal level through an 8 percent user charge on domestic tickets and $3 per person on international tickets, and it is not necessary to place a double burden on them.

The bill reshapes the airport grant-in-aid program making use of the air passenger's money that is already

in the Aviation Trust Fund, thereby making it easier for local communities to finance airport needs and ensuring that there is no need to resort to local head taxes.

A legal memorandum from the Senate legislative counsel to the Committee regarding passenger head taxes is printed below.

. . . .

[p. 25] . . . .

Conclusion

S. 38, as explained above, provides a great new source of funds for airport development and improvement throughout the United States. The bill, if enacted, will reduce substantially the reliance on locally-generated funds for airport development and will place a greater burden and responsibility on the United States to encourage, promote, and finance aviation facilities which are required in the national air transportation system.

The bill provides that the cost of this increased Federal participation will be borne by the users of the system, not the general taxpayer. The airlines, airline passengers and shippers, and aircraft owners and operators all contribute to the development of the system by paying user taxes established in 1970. S. 38 provides that a greater share of the revenues from these taxes will filter down to local governments—airport sponsors—to meet local and national needs.

[p. 26] In accepting a greater Federal role and responsibility in airport development the Committee has also ated to prohibit local taxation on passengers or on the carriage of passengers. We believe such taxation to be inimical to the development of a national system funded in large part by uniform Federal taxes. Currently, some disagreement exists within the Administration as to whether the Committee action increasing Federal participation in airport development is warranted at this time. The Committee, however, is convinced that it is.

Nonetheless, the Committee views S. 38 as an aviation development package—the components of which cannot be separated. We believe that if the prohibition on local head taxes was not a part of the total new program, there would be need to re-evaluate the increased Federal funding for airport development projects called for in S-38. If local taxes on passengers and air carriers are allowed to proliferate nationally and are to become a major factor in the financing of local airport facilities, then there is obviously less need for a Federal airport development program. If local head taxes become a significant airport funding mechanism the public interest may well require a reduction in Federal user taxes and a diminution of Federal participation in airport development projects.

Therefore, by prohibiting state taxation on passengers or on air transportation, the Committee has accepted greater responsibility for U. S. assistance, believing that the two actions must be viewed together and that neither should stand alone without the other.

**119 CONG. REC. 3,196-97 (FEB. 2, 1973).**

AIRPORT DEVELOPMENT ACCELERATION ACT OF 1973

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the pending business be laid aside temporarily and that the Senate turn to the consideration of Calendar No. 19, S. 38, that it be laid before the Senate and made the pending business.

The PRESIDING OFFICER. The clerk will report the bill.

The assistant legislative clerk read as follows:

A bill (S. 38) to amend the Airport and Airway Development Act of 1970, as amended, to increase the United States share of allowable project costs under such act, to amend the Federal Aviation Act of 1958, as amended, to prohibit certain State taxation of persons in air commerce, and for other purposes.

[The same text that appears in the Congressional Record at Jan. 4, 1973, was read again].

. . . .

Mr. MANSFIELD. Mr. President, there will be no discussion or debate on this bill this afternoon that I know of.

---

**119 CONG. REC. 3,348-61 (FEB. 5, 1973).**

**AIRPORT DEVELOPMENT ACCELERATION ACT OF 1973**

**The PRESIDING OFFICER (Mr. Baker). Under the previous order, the Senate will now resume the consideration of S. 38, which the clerk will state by title.**

**The assistant legislative clerk read as follows:**

A bill (S. 38) to amend the Airport and Airway Development Act of 1970, as amended, to increase the United States share of allowable project costs under such act, to amend the Federal Aviation Act of 1958, as amended, to prohibit certain State taxation of persons in air commerce, and for other purposes.

. . . .

Mr. CANNON. . . .

. . . .

As most of my colleagues know, S. 38 is almost identical to S. 3755 of the 92d Congress, the bill passed by the Senate on August 10, 1972, by a vote of 83 to 2. Following passage by the Senate last year, the House passed a very different version. In fact, the House bill had only one significant provision. It prohibited, for an 18-month period, State and local head or use taxes on passengers in air transportation. It did not address itself to the serious, sometimes even critical financial needs of the Nation's local governmental units which own, maintain, and operate the nearly 3,000 publicly owned airports in the United States—the needs that some communities were trying to meet by levying local head taxes or use fees on passengers in air transportation.

The House did not concern itself with the airport development program but chose simply to deal with the "head tax problem," by postponing a final decision on the issue for 18 months, during which time a moratorium would be imposed.

**We in the Senate can take pride in the fact that our solution to the head tax problem was much broader. Our bill of last year did prohibit head taxes, user taxes, gross receipts taxes, and other forms of State and local taxation on airline passengers or on the carriage of airline passengers. But the bill did much more than that. It created a much more ambitious program to provide additional Federal funds, trust funds, to assist local governments in meeting their needs to develop additional and expanded air transportation facilities.**

And this new program, created by the Senate and opposed by the administration, would not have cost U. S. taxpayers an additional dime. The program was to be entirely funded from revenues in the airport and airway trust fund, revenues which result from Federal user taxes on passengers, airlines, and private aircraft owners and operators who take advantage of the U. S. air transportation system.

Under the current user tax structure which was adopted by Congress in 1970, there are more than adequate revenues coming into the trust fund to pay for the additional Federal financial assistance that we provided for in our program. User taxes would not have to be increased to pay for the additional Federal assistance.

After weeks of very difficult negotiations with the House in conference on this bill last year, we finally succeeding in preserving, in the compromise bill, most of the favorable features of S. 3755.

On October 27, after we adjourned, President Nixon vetoed this very important legislation and issued a vague statement indicating that the issues involved in the bill needed more study.

Because the legislation has enjoyed wide support from the aviation community, the public, and from local governments across the Nation, Senator Magnuson and I reintroduced the measure on the opening day of the 93d Congress in order to quickly give the Congress another opportunity to express itself on the issue.

We were of the view that, since we had conducted thorough hearings on the bill last year, additional hearings were not necessary. Accordingly, the bill was considered and discussed in executive sessions of both the subcommittee and the full Commerce Committee last week.

. . . .

Finally, Mr. President, S. 38 prohibits a new, inequitable, and potentially chaotic burden of taxation on the nearly 200 million persons who use air transportation each

year. The bill prohibits the levying of State or local head taxes, fees, gross receipts taxes or other such charges either on passengers or on the carriage of such passengers in interstate commerce.

In 1970, Congress established a national, uniform system of user taxation on all users of the air transportation system and levied a tax of 8 percent on all airline tickets. That user tax was intended to finance aviation facilities development through a national program and Congress intended at the time that the Federal tax be the only tax on airline passengers.

Last year, however, the U. S. Supreme Court upheld the validity of several State and local passenger head taxes, overturning a precedent established more than a hundred years ago.

Since that time many communities have enacted passenger head taxes of one kind or another which vary in rate, scope and applicability. The committee views these taxes as an unnecessary and discriminatory burden on passengers in air transportation and as a form of double taxation which we did not intend when, in 1970, we enacted a national system of aviation user taxation.

Presently, at least 31 different government jurisdictions have levied head taxes and many other communities are in the process of doing so or are seriously considering it. We believe this proliferation of local taxes can and will undermine a sound national transportation system by causing confusion, delay, inequities, and discrimination in air transportation and must be prohibited before it gets any further out of hand. There is no need for two systems of user taxation; particularly in light of the increased Federal assistance to airports provided for in this bill.

Mr. President, we view S. 38 as an aviation development package, the components of which cannot be separated. We believe that, if the prohibition on local head taxes was not a part of the total new program, there would be need to re-evaluate the increased Federal funding for airport development projects called for in S. 38. If local

taxes on passengers and air carriers are allowed to proliferate nationally, and are to become a major factor in the financing of local airport facilities, then there is obviously less need for a Federal airport development program.

By prohibiting State taxation on passengers or on air transportation, the committee has accepted greater responsibility for U. S. assistance. With the increased Federal assistance, we can see no valid reason for the continuance of local passenger taxation. (*Id.* at 3349).

. . . .

Mr. PEARSON. . . .

. . . .

I strongly recommend passage of the pending bill. The following points may be made in support of this position.

. . . .

State and Local Taxation of Air Fares

Finally, Mr. President, the committee bill prohibits State and local taxation of air fares. The Congress intended in 1970 to preempt the States and localities from levying such taxes, as taxation on air fares is one of the predominant sources of revenue for the trust fund. Recent Supreme Court decisions necessitate the clarification of this congressional policy determination.

If more than 500 localities—or even a significant proportion of this number—were unilaterally to levy taxes on airline passenger fares, there would result an unconscionable and unacceptable burden on interstate commerce. The national system of air service upon which 180 million airline passengers depend annually would become a hodgepodge of Balkanized assessments and levies against nonresident travelers whose business or leisure takes them across State lines. The committee bill prohibits State and local taxation of air fares, but this Federal premption is carefully balanced by substantial increases in trust fund assistance for airport development and modernization. (*Id.* at 3350).

. . . .

Mr. PEARSON. Mr. President, I rise to speak in opposition to the amendment [to change the formula for distribution of funds from the trust fund to various sizes of airports] of the distinguished Senator from Kentucky.

One really needs to go back to the initial purposes of the hearings which gave birth to this particular bill. Those hearings addressed themselves to a situation whereby community after community and city after city, were either imposing or beginning to impose a so-called head tax upon passengers who would embark or depart from aircraft.

This was really most inconsistent with the original intents and purposes of the trust fund concept as passed some years ago. The havoc that would have resulted in the airports of this country as the different kinds of head taxes were imposed for different purposes and in different amounts, as well as all the congestion and traffic that would have been imposed, led the committee to judge that there should be a prohibition against head taxes such as this. (*Id.* at 3352).

. . . .

Mr. HARTKE. . . .

. . . .

Mr. President, those portions of S. 38 which deal with State taxation of air commerce are before us today because of a lawsuit which involved the Evansville-Vanderburgh Airport. That airport handles more than 329,000 passengers each year. It serves not only Vanderburgh County but 40 other counties in the surrounding area. To ask the residents of Vanderburgh County to bear through the property tax the burden of operating a rapidly expanding airport which serves 40 other counties is to place an unfair and unjust burden on the property owners in Vanderburgh County.

Mr. President, S. 38 is the successor to S. 3755 which passed the Senate overwhelmingly during the last session.

The size of that vote is a recognition of the fact that head taxes are a hindrance to air commerce. But the provisions of S. 38 do not provide an adequate substitute. For many airports it will be meaningless to raise the Federal share from 50 to 75 percent because they do not have the funds available to raise the 25-percent local share. For this reason I intend to offer later in this session, legislation which will revamp the financing of airports and the financing of of the Nation's aviation system as a whole. (*Id.* at 3356).

. . . .

So the bill (S. 38) was passed, as follows:

S. 38

An Act to amend the Airport and Airway Development Act of 1970, as amended, to increase the United States share of allowable project costs under such Act, to amend the Federal Aviation Act of 1958, as amended, to prohibit certain State taxation of persons in air commerce, and for other purposes (*Id.* at 3360).

. . . .

"State Taxation of Air Commerce

"Sec. 1113. (a) No State (or political subdivision thereof, including the commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) shall levy or collect a tax, fee, head charge, or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom: *Provided, however,* That any State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) which levied a tax, fee, head charge, or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons

traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom prior to May 21, 1970, shall be exempt from the provisions of this subsection until July 1, 1973.

"(b) Nothing herein shall prohibit a State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) from the levy or collection of taxes other than those enumerated in subsection (a) of this section, including property taxes, net income taxes, franchise taxes, and sales or use taxes on the sale of goods or services; and nothing herein shall prohibit a State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) owning or operating an airport from levying or collecting reasonable rental charges, landing fees, and other service charges from aircraft operators for the use of airport facilities.

"(c) In the case of any airport operating authority which—

"(1) has an outstanding obligation to repay a loan or loans of amounts borrowed and expended for airport improvements;

"(2) is collecting, without air carrier assistance, a head tax on passengers in air transportation for the use of its facilities; and

"(3) has no authority to collect any other type of tax to repay such loan or loans, the provisions of subsection (a) shall not apply to such authority until July 1, 1973."

(*Id.* at 3361).

. . . .

**119 CONG. REC. 3,928 (FEB. 8, 1973).**

## AIRPORT AND AIRWAYS IMPROVEMENT ACT OF 1973

(Mr. ADAMS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ADAMS. Mr. Speaker, I am introducing today the Airport and Airways Improvement Act of 1973. The principal purpose of this bill is to abolish the discriminatory and capricious head tax on air passengers which has been arbitrarily imposed on travelers at more than 31 airports throughout the country. This tax is unfair because it not only falls on top of the 8 percent tax on tickets already paid by air passengers, but differs in amount from airport to airport. As a flat tax rather than a percentage tax, these head taxes are more burdensome on those flying short distances than long. They fly in the face of the uniform tax system established by the Airways and Airport Act of 1970; they are in effect double taxation on air passengers.

The bill recognizes the need for increased financing for airport development. The head tax is no solution to this problem—in some instances, the head tax receipts go into general revenues and are not even earmarked for airport development. The logical source for this financing is the trust fund established under the Airport and Airways Act. This fund, created by user charges, is already in substantial surplus. My bill would increase the Federal share in airport development projects from 50 percent to 75 percent. Many airport projects have been held back because of the inability of local sponsors to meet the dollar for dollar matching requirement. Hopefully, this increase in the Federal share will help to overcome these roadblocks.

Mr. Speaker, I believe that this bill is of the greatest importance to the millions of American air travelers.

# AIRPORT DEVELOPMENT ACCELERATION ACT OF 1973

---

HEARINGS

Before the

SUBCOMMITTEE ON

TRANSPORTATION AND AERONAUTICS

of the

COMMITTEE ON

INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

Ninety-Third Congress

First Session

on

H.R. 4082, H.R. 2695, H.R. 4213, H.R. 4214, H.R. 4182, and S. 38

(and all similar bills)

Bills to Amend the Airport and Airway Development Act of 1970 to Increase the United States Share of Allowable Project Costs Under Such Act; to Amend the Federal Aviation Act of 1958 to Prohibit Certain State Taxation of Persons in Air Commerce; and for Other Purposes

---

**March 14, 15, 20, 22, and 27, 1973**

---

**Serial No. 93-6**

---

**Printed for the use of the Committee on Interstate and Foreign Commerce**

---

**Received May 16, 1973**
**Washington State Library**
**Documents**

. . . .

[p. 96] . . . .

STATEMENT OF STUART G. TIPTON, CHAIRMAN, AIR TRANSPORT ASSOCIATION OF AMERICA; ACCOMPANIED BY LEO SEYBOLD, VICE PRESIDENT, FEDERAL AFFAIRS

Mr. Tipton. Mr. Chairman, I appreciate the opportunity to appear before this committee.

I have a very short statement here so if I may, I will proceed through it.

Mr. Jarman. That is fine.

Mr. Tipton. Mr. Chairman, I am Stuart Tipton, chairman of the board of the Air Transport Association, which represents virtually all of the Nation's scheduled air carriers. On their behalf, as well as the millions of people who use the national air transportation system annually, I want to express appreciation for your timely action in holding these hearings, for the issues of head taxes, gross receipts taxes and airport improvements are of critical importance to them. You will recall that I submitted detailed comments on these issues last session and a copy of that statement is attached for your reference.[1]

[p. 97] We had hoped that these issues would be resolved by the enactment of the legislation agreed upon by the House-Senate conferees last year. We were disappointed when S. 3755 was vetoed, and frankly puzzled that it was considered in the same category as general revenue measures, since the bill involved only revenues from user charges in the trust fund. The part of the veto message which stressed that airport funds have quadrupled since 1970 was further perplexing, since such an acceleration in airport improvement is what the administration must have

---

[1]See pp. 65-75, "Air Passenger Fees—State and Local Charges," hearings before the Subcommittee on Transportation and Aeronautics, Interstate and Foreign Commerce Committee, 92d Cong., second sess., serial No. 92-74.

had in mind when it promoted special taxes on users to assure such development.

All in all, the veto was quite ironic. The need for such legislation has increased, not diminished over the past months and we urge you to again act to prevent the levying of discriminatory State or local taxes on travelers and air commerce, while providing for necessary improvement to the Nation's airport system.

The airlines believe that it is essential to maintain the national character of the airport and airways system, and that a multiplicity of discriminatory State or local taxes runs counter to this concept. Certainly, such a situation would be contrary to the whole purpose of Congress in creating the airport and airway development program in 1970, providing, in the process, not only a uniform national plan but a national funding mechanism as well.

The trust fund is supported, as you know, by user charges of 8 percent on domestic and $3 on international flights, among others, and these will yield approximately $695 million this fiscal year from air travelers. Now, in addition to this, air travelers are being increasingly exposed to State or local head taxes, as a result of the U. S. Supreme Court's April 19, 1972, decision, of which you are well aware.

The airlines continue to believe that it is neither equitable nor necessary to expose air travelers to undue, additional burdens of taxation, and urge you to again report legislation which prohibits State or local head taxes.

When I appeared before you last year on June 19, eight State and local taxes had been enacted. Now there are over forty such taxes and many more States and localities have indicated that they intend to exploit this new source of revenue, some for purposes other than airport improvements. We have been advised that head-tax measures to offset a major portion of a general fund deficit of $200 million for 1975 are being proposed in another State. A bill requiring the airlines to collect $5.50 for each deplaning passenger has been introduced as the first step in this effort.

Philadelphia, of course, provides the most extreme example of a head tax which has actually been enacted. Although that city's original $2 enplaning and $2 deplaning charge has been changed to a $3 departure charge, the revenues still are to go to a general fund and are not earmarked for airport improvement. For a Philadelphia to Washington coach passenger, this $3 charge adds 14 percent to the price of his ticket and since he also pays an 8 percent Federal tax, that means he is paying a total of 22 percent. This particular imposition illustrates the burden such a local tax can place on the air passenger. Certainly this head tax is not only inequitable, but a distortion of the of the Supreme Court's decision as well. In the latter instance, the courts offer a pos- [p. 98] sible ultimate avenue of relief, but in the instance where a head tax may be legal, but inequitable and unduly burdensome, the Congress is the air traveler's court of last resort. The U. S. Supreme Court invited your action, as you recall, by concluding in its decision that "• • • at least until Congress chooses to enact a nationwide rule, the power will not be denied to the States." We urge you to take action now, to prohibit this kind of direct and indirect discriminatory taxation of air travelers and air commerce.

Particularly dangerous, burdensome, and discriminatory in our judgment is one State's imposition of a tax on the gross receipts derived from the sale of interstate air transportation—a so-called airlines excise tax. This tax is levied at a rate of 4 percent on airline receipts in that State "for the privilege of engaging in the business of transporting persons or property by air." The revenue derived from this tax is used for projects totally unrelated to aviation. Furthermore, it is levied only on airlines. Airlines pay all other taxes generally applicable to business in the State, and yet they and their passengers are being singled out as an easy source of revenue, whether or not airline operations in the State are profitable, and regardless of their general tax burden. Thus, Pandora's box has been opened to another form of discriminatory taxation on air transportation which, if allowed to proliferate in a myriad of possible forms, could deal a severe financial blow to air travelers as well as the airlines.

I assure you that this is no illusory fear. Already, in another State, legislation has been introduced to levy a 15-percent gross receipts tax on airline passenger ticket sales within the State, in addition to other general business taxes which airlines already pay, and the money is to underwrite general welfare programs, not airport improvements. Although we recognize that the introduction of such a bill is not tantamount to enactment, we do believe it provides a tangible and extreme example of the way in which this form of tax can get out of hand.

If adopted in all 50 States, the projected cost of a 4-percent imposition would be $92 to $300 million annually, depending on the formula used, or it could be even higher, of course, if a higher percentage were levied. The $300 million figure is more than the industry made in 1971 and 1972 combined. Obviously, the airlines could not absorb the cost of such widespread gross receipts taxes as merely another operating cost, and it would have to be reflected in the fare structure. In this event, a 2.5-percent fare increase would have to be borne by air travelers, a step that none of us, I'm sure, wishes to see ultimately when, in fact, it can be avoided.

Let me pause a moment here, to discuss this Ohio gross receipts tax a little further.

We understand, from looking at the roster of witnesses that will be before the committee, that among them will be one of the tax officials of the State of Ohio, and we have no doubt that as he appears he will attempt to justify this very heavy and discriminatory tax on airlines, on the grounds that the airlines do not pay enough taxes to the State of Ohio.

Let me answer in advance by saying this: The airlines pay all the taxes that other business enterprises pay in the State of Ohio. We are [p. 99] taxed in the same fashion as others. This gross receipts tax is an additional and very special burden imposed by Ohio.

The proceeds of this tax goes to the widows and orphans of firemen and policemen—their pension funds.

As far as we are concerned, we will join with other taxpayers in the State of Ohio to provide for the restoration of that now bankrupt fund to meet this laudable need, but we do not want to be singled out as one industry in that State to provide for this particular State's obligations. That is our point with respect to this particular gross receipts tax.

A more important point, possibly a more basic point, is the discriminatory character of such taxes. Of course, a common characteristic of this tax and the head tax is their discriminatory nature. Either tax, if enacted throughout the country would impose additional financial burdens on air travelers, who are already paying Federal taxes which were established when it was widely assumed that such State and local taxes could not be constitutionally imposed. Both seem to be convenient vehicles for unwarranted taxation of air travelers and air commerce for nonaviation purposes, or for projects which do not necessarily benefit the airports where users are taxed. These taxes can easily be escalated, and if allowed to go unchecked, pose a hazard of disrupting the national system ultimately. The best way to avoid this is to prohibit these taxes again, as you did in the bill which you passed last session. No State or locality which would seek to levy these taxes for nonaviation purposes has a legitimate claim to them. In those cases where communities are relying on head taxes to provide the revenue needed to fund airport improvements, it should not be necessary since as you recognized last year, the airport program can be adjusted to make the user charge revenues in the trust fund more available to the communities who need assistance.

Last year, as you recall, the airlines stressed the need to make fundamental changes in the airport development air program, not only to offset any revenue loss to communities from prohibition of head tax, but more importantly, to accelerate the capital improvements which will be needed to accommodate the projected needs of 325 million passengers by 1980 and nearly 500 million by 1985. It was also brought out that progress toward this goal has

been stifled by the inability of many communities to provide the necessary matching funds for airport grants. So far as we are able to determine, millions of dollars in badly needed projects are being withheld because of this difficulty.

The table inserted in my testimony here, indicates the downward trend in the value of project requests for Federal aid. I will not repeat those figures. The downward trend is obvious and rather striking.

| | Number of projects | Dollar value (millions) |
|---|---|---|
| Fiscal year— | | |
| 1971 | 719 | $573.3 |
| 1972 | 516 | 392.5 |
| 1973 (through Mar. 2) | 407 | 166.0 |

[p. 100] Our observations indicate that much of the fall off in the value of requests for aid is related to the financing of matching funds. Smaller, less expensive projects are being undertaken; major projects are being delayed. The slowness with which airport sponsors are signing grant agreements is a further indication of the matching fund problem. As of January, fiscal year 1973, FAA had allocated funds totaling $149 million to airport sponsors, however, grant agreements had been completed on only $59.5 million. Many of the grant agreements that have been consummated recently are for fencing and fire, crash and rescue vehicles for the certification program.

Last year, we expressed the view that the best way to assure sustained development of the Nation's airports was to modify the airport program in the following ways:

First, change the 50-50 percent matching fund ratio for grants for all airports to 90-10 percent, as the Highway Trust Fund has done with the interstate highway system.

Second, make public areas of passenger terminals eligible for Federal funding, since this is the area which will be hardest hit by the burgeoning growth in air travel.

Third, provide funding for the capital costs of the Government-required airport security and certification programs.

The bill which was ultimately passed by the Congress prohibited gross receipts and head taxes, provided 82 percent Federal funding for the security and airport certification program, and established a 75-25 percent matching ratio for airports other than the 22 major hubs.

For the latter, the matching ratio remained at 50-50.

While we were disappointed that the bill did not follow the highway precedent and provide for a 90-10 percent matching ratio for all air carrier airports and did not establish eligibility for the public areas of passenger terminals, we did feel that Congress had tackled and solved the most immediate problems. It was a good bill. However, the President concluded that a provision of the bill which increased the minimum expenditure limit for the airport program from $280 million to $350 million was an excessive expenditure for this purpose and vetoed the legislation, explaining his action as follows:

And I quote from the veto message:

This bill would increase Federal expenditures and raise percentage participation in categorical grant programs with specific and limited purposes. I believe this would be inconsistent with sound fiscal policy. Airport development funds have been almost quadrupled since 1970 under this administration.

The airlines are still convinced of the great urgency of taking action on the issues that the Congress dealt with in the last year's legislation. As we have already pointed out, the enactment of head taxes by cities has increased greatly in recent months and we have every reason to believe that that movement will continue.

Cities are still being hampered in the achievement of airport improvements by the 50 percent matching grant

provision. The airport improvements designed to provide additional security should have a very high priority and the improvements necessary to achieve legally required certification must move forward rapidly.

In communications to the Congress, the Department of Transportation has suggested that all airport changes be delayed until the Congress has received and had an opportunity to review the cost [p. 101] allocation study, the National Airport System plan and the report of the Aviation Advisory Commission. We do believe that these studies are important and will inevitably provide a basis for a thorough examination of the entire airport and airways program. We look forward to this reexamination because we would hope that we can present again to the Congress, hopefully in a more convincing way, our desire to provide for an improved matching grant ratio for all airports and our belief that the public areas of terminal buildings should be made eligible for Federal airport aid on a 50-50 basis.

However, for all the reason we have stated, we do not believe that the problems dealt with by last year's bill can be postponed for the length of time required for a congressional review of these studies. Accordingly, we hope that you will promptly report a bill similar to that which was vetoed last year, although perhaps with a lower required expenditure level. The current requirement of $280 million annually is after all, a floor, not a ceiling, and the amount can be adjusted upward by the Appropriations Committee.

In addition, the review of the airport and airways program which follows submission of the DOT studies will provide an opportunity to further explore this problem. For these reasons, we do not consider it absolutely essential that the mandatory minimum spending level be increased at this time. The delegation of such a requirement in the legislation you are now considering should assure its enactment without undue delay since it would remove the President's stated objection to the measure.

That concludes my statement, Mr. Chairman, I will be glad to try to answer any questions.

Mr. Jarman. Thank you, Mr. Tipton, I think it is an excellent statement.

At this time, before we get into questions and answers, I would like to introduce Mr. Edward J. Driscoll, National Air Carrier Association, who is listed as one of our three witnesses this morning, and who has asked to be recognized to insert a statement in the record.

. . . .

[p. 246] STATEMENT OF THEODORE KOETZ, DEPUTY TAX COMMISSIONER, STATE OF OHIO; ACCOMPANIED BY DONALD SWEPSON, COUNSEL

Mr. Koetz. Yes. My name is Theodore Koetz. I am Deputy Tax Commissioner of the State of Ohio. And this is Mr. Donald Swepson of our legal staff.

Mr. Jarman. Mr. Koetz, you may proceed in the manner you desire with your testimony.

Mr. Koetz. Mr. Chairman and honorable members of the Interstate and Foreign Commerce Committee:

As Deputy Tax Commissioner of the State of Ohio, I appreciate this opportunity to appear before you in your deliberations on three pieces of legislation concerning airports, airways, and airlines, S. 38, H. R. 2695, and H. R. 4082.

Although these bills deal with several subjects, the interest and concern that we in Ohio have in these bills are the portions titled "State Taxation of Air Commerce."

Mr. Jarman, Mr. Koetz, if you will, you may submit this statement for the record and then just emphasize the highlights that you think this committee should consider. We would appreciate that.

Mr. Koetz. Right.

Mr. Chairman, basically we have an airlines excise tax in Ohio which is unique, and we are probably the only State in the 50 States that has such a tax. It is based on 4 percent of the gross receipts of an airline—passengers and also freight—that is apportionable to Ohio.

We feel that as to the head taxes basically we have no objection to the head taxes or the prohibition against the head taxes in the various cities, but we feel that the airline excise tax, which we passed in 1969, is a fair and equitable tax based upon the overall burden that the airlines are bearing in the State of Ohio, compared to other utilities.

For example, the railroads and other transportation, such as trucking companies.

Our contention is that some of the language in the bill, in the Senate bill right now would prohibit Ohio's airline excise tax. And we would like to suggest legislation or an amendment that would basically let us maintain our airlines excise tax.

Though it is not a big revenue-producer for the State of Ohio—it brings in approximately $2 million in Ohio—we feel that the intention or possibly the intention of the bill, was to eliminate the head taxes—the primary thrust of the bill. And we just want to bring to the committee's attention the fact that this would eliminate an airline excise tax in Ohio.

I would entertain any questions on the presentation.

[Mr. Koetz' prepared statement follows:]

Statement of Theodore Koetz, Deputy Tax Commissioner of Ohio

Mr. Chairman, honorable members of the Interstate and Foreign Commerce Committee, as Deputy Tax Commissioner of the State of Ohio, I appreciate this opportunity to appear before you in your deliberations on three pieces of legislation concerning airports, airways, and airlines, S. B. 38, H. R. 2695, and H. R. 4082.

Although these bills deal with several subjects, the interest and concern that we in Ohio have in these bills are the portions titled "State Taxation of Air Commerce". For convenience in referring to the text of the bills, I will refer to [p. 247] S. 38, since the pertinent language is similar in all three bills, and S. 38 has passed the Senate. The state taxation portion of S. 38 begins at line 11 on page 6, and continues through line 9 of page 8.

The specific language which concerns us is contained in lines 12 through 20 on page 6:

"Section 1113. (a) No State * * * shall levy or collect a tax, fee, head charge, or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom."

This language first came to our attention with the introduction of S. 3755 in the Second Session of the 92d Congress. Prior to and at the time of its introduction the newspapers and magazines, general and specialized, reported that legislation would be or had been introduced to prohibit the rising trend of the imposition of local "head taxes" at airports across the nation. The thrust of the legislation, as reflected in the reports and publicity, was to the type of per capita charges on air travelers or "head taxes", as had been enacted and imposed in the State of New Hampshire; Evansville, Indiana; Philadelphia; and ten or so other cities. That the object of the legislation was the so-called "head taxes" is reflected in articles in National Journal (July 29, 1972, p. 1222), Congressional Quarterly (December 23, 1972, p. 3193), and in comments by Chairman Staggers in response to inquiries by Mr. Matsunaga contained in the House Congressional Record (August 18, 1972, p. H 8003).

However, upon obtaining the bill and reading the state tax prohibition provisions in S. 3755 (which is identical in S. 38, in the pertinent portions) we found that the prohibition of state taxes was much broader and all-inclusive

than the various articles and reports indicated. The prohibition would encompass "a tax * * * directly or indirectly, * * * on the carriage of persons traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom".

Our particular concern in Ohio is that this language, although not the stated or understood intent, would apparently render null and void the Ohio airlines excise tax.

In 1969, the Ohio General Assembly enacted the airlines excise tax, which is contained in Chapter 5745, Ohio Revised Code, effective August 18, 1969.

The tax has been the subject of litigation as to its propriety and constitutionality. The legislation has been upheld by the Ohio Board of Tax Appeals (*United Air Lines Inc. v. Porterfield, Tax Commissioner,* B. T. A. #70-05-1397, February 5, 1971), the Ohio Supreme Court (*United Air Lines v. Porterfield* [1971] 28 Ohio St. 2d 97), and the United States Supreme Court which dismissed the appeal for want of a substantial federal question, June 19, 1972 (*United Air Lines Inc. v. Porterfield,* 92 S. Ct. 2461).

The basis of the tax is relatively simple. The Statute (Sec. 5745.02, Ohio Revised Code) provides:

"* * * An excise tax is hereby imposed upon the privilege of engaging in the business of transporting persons or property by air within this state. The tax is as follows:

(A) Four per cent of the receipts derived from transportation which begins and ends within the state;

(B) Where the transportation does not begin and end within this state, four per cent of the receipts derived therefrom attributable to business carried on within this state based on the proportion of the mileage within the state to the entire mileage over which the persons or property are transported, into or out of the state.

All moneys received in the state treasury * * * shall be deposited to the credit of the general revenue fund."

The fact that this tax is not excessive or burdensome to the airlines is seen from the way that airlines are treated within the overall Ohio tax structure, and from the total liabilities of the airlines for this tax.

The Ohio tax structure may be unique in reference to airlines. Most businesses in Ohio, be they domestic or foreign, intrastate or multistate, are amenable to a franchise tax and a personal property tax, the latter either in the form of the general personal property tax or the public utility ad valorem tax. However, the airlines are fully subject only to the corporate franchise tax. They are exempted from the public utility ad valorem tax because, unlike the railroads, they are not classified as public utilities. Although they do pay the personal property tax, it is far from a burdensome levy because their major investment is personal property, [p. 248] aircraft, is not subject to the Ohio personal property tax. In addition, commercial planes are exempt from Ohio sales tax, aviation gasoline is exempt from motor fuel tax, and pet fuel is exempt from both motor fuel tax and sales tax. Also, of course, public airports are exempt from real property taxes.

Thus, while railroads pay over $30 million in total taxes to the state of Ohio, and the trucking industry pays well over $100 million, all aviation has an Ohio tax burden slightly over $3 million, including the airlines excise tax.

A completely clear picture of the actual tax liability and revenue from the Ohio airlines excise tax has not yet emerged. Litigation on the measure just ended in June, 1972, and there are some individual questions and problems being resolved; payment of the tax need not be made while an assessment is under review or litigation. However, total revenue from the tax is estimated to be about $2 million per annum.

Although we cannot divulge the specifics on individual taxpayers because of confidentiality statutes in our state

law, we have about 135 taxpayers filing the airlines excise tax reports. A dozen of those are major airlines and the others are fixed-base operators or organizations performing aerial services subject to the tax. The average liability of the major air carriers, which represent well over 90% of total collections under the excise tax, is estimated to be about $35,000 quarterly, or $140,000 annually.

I would, therefore, recommend to and request of this Committee that any legislation prohibiting the state's rights to tax air carriers be so drafted so as not to include in the prohibition the Ohio airlines excise tax.

I make this request for the State of Ohio on the basis that our tax is fair, reasonable, and necessary, and that it is not a tax of the type that has given rise and impetus to this legislation, the so-called "head taxes". The State of Ohio does not have airport "head taxes", nor, to my knowledge, does any local subdivision of the state. I believe that the Ohio airlines excise tax is similar to the types of taxes permitted by S. 38, lines 7 through 22 on page 7, but would be prohibited under the language of the bill as it now exists.

We have specific language suggestions, and would be happy to discuss this with the Committee or its technical advisors if you so desire.

Mr. Jarman. What other States, if any, have this kind of excise tax?

Mr. Koetz. None. To my knowledge, there are none, Mr. Chairman.

Mr. Jarman. What amount of money is raised in Ohio from this?

Mr. Koetz. Approximately $2 million a year.

Mr. Jarman. Of course, this committee, and you, realizes that there is real concern in the airline industry over this type of tax, and the danger as the airlines view it is that this approach will expand into other parts of the country.

So I think it is of particular interest to the subcommittee to have some direct testimony from you on this.

The Chair has no further questions at this time.

Mr. Dingell?

Mr. Dingell. Thank you, Mr. Chairman.

You have indicated that you have some suggested amendatory language for the committee. Would you see that it is submitted to the counsel so that we can have it for the record?

[The following proposed language was received for the record:]

State Taxation of Air Commerce (Proposed Language)

Sec. 1113. (a) No State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) shall levy or collect a tax, fee, head charge, or other charge on persons travelling in air commerce or on the act of transporting persons in air commerce: Provided, however, That any State or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) which levied and collected a tax, fee, head [p. 249] charge, or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom prior to May 21, 1970, shall be exempt from the provisions of this subsection until July 1, 1973.

(b) Nothing herein shall prohibit a State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) from the levy

or collection of taxes other than those enumerated in subsection (a) of this section, including property taxes, net incomes taxes, franchise taxes, sales or use taxes on the sale of goods or services, privilege or excise taxes, and gross receipts taxes fairly apportioned to a State; and nothing herein shall prohibit a State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) owning or operating an airport from levying or collecting reasonable rental charges, landing fees, and other service charges from aircraft operators for the use of airport facilities.

(c) In the case of any airport operating authority which—

(1) has an outstanding obligation to repay a loan or loans of amounts borrowed and expended for airport improvements;

(2) is collecting, without air carrier assistance, a head tax on passengers in air transportation for the use of its facilities; and

(3) has no authority to collect any other type of tax to repay such loan or loans,

the provisions of subsection (a) shall not apply to such authority until July 1, 1973.

Mr. Dingell. You have no head taxes in the State of Ohio?

Mr. Koetz. None.

Mr. Dingell. Your appearance here this morning is limited to the presentation of your excise tax?

Mr. Koetz. Yes, sir.

Mr. Dingell. This is a rather novel form of excise tax. In my memory, excise taxes have always been related to sales or transactions. This excise goes to any freight or passenger or moving in commerce across Ohio, whether

the aircraft actually touches the State's surface or not; am I correct?

Mr. Koetz. No, sir. This only applies where there is some contact or nexus with Ohio. In other words, they make a landing and passengers get on or get off. It is not on flights going over the State of Ohio. We do not tax any overflights.

Mr. Dingell. I travel between here and Michigan. And, assuming I were to go there and the craft were to land at Cleveland or Youngstown airports between here and Detroit, would I be subject to that tax?

Mr. Koetz. No—if you did not get off the plane there. Otherwise: Yes, you would be. Not you directly, the airline.

Mr. Dingell. Suppose I got off to stretch my legs, to get a cup of coffee or go to the restroom?

Mr. Koetz. No, sir.

Mr. Dingell. I would not be subject to the tax?

Mr. Koetz. No.

Mr. Dingell. Only if I were to, say, get off the aircraft and end my trip in Ohio?

Mr. Koetz. That is correct. If you were originating or if that were your destination.

Mr. Dingell. Suppose this were part of the continuing trip. I would get off because of bad weather and go on to Detroit. Would I be subject to the tax?

[p. 250] Mr. Koetz. No, sir.

Mr. Dingell. Suppose I were to, let's say, have a ride with a friend and ride by car to Cleveland and we would get on at Cleveland and take an aircraft to Washington. Would I be subject?

Mr. Koetz. You would be.

Mr. Dingell. This is not a gross receipts tax. You are not talking about a gross receipts tax?

Mr. Koetz. No. Our receipts are primarily limited to just that that we can apportion to Ohio.

Mr. Dingell. You don't have a fuel tax on aircraft?

Mr. Koetz. No, sir.

Mr. Dingell. Why not? I am curious to know. That would not be banned by the legislation.

Mr. Koetz. No; that is correct, because the legislature just has not seen fit to pass it.

Mr. Dingell. A matter of policy.

Mr. Koetz. Right.

Mr. Dingell. Was there any underlying reason for the policy? Oftentimes when a legislature acts they have some underlying reason for what they did.

Mr. Koetz. I don't know of any underlying policy for that.

Mr. Dingell. How long has this been in process?

Mr. Koetz. Since 1969.

Mr. Shoup. If I were to get on a plane in Cleveland wherever my destination would be, the airline would be charged a certain fee. Is this correct?

It would be identical no matter where my destination is, because I would be over Ohio only a certain amount of time.

Mr. Koetz. That is correct. In other words, there would be a measurement taken by the number of miles that you have flown on your trip in Ohio as compared to your total miles.

In other words, if you were flying to Hawaii it would only be about 200 miles. That ratio would be applied to, say, 3000 miles that we could not touch, say, or could not apportion to Ohio.

Mr. Shoup. The airline would pay that?

Mr. Koetz. That is correct.

Mr. Shoup. I would ask you, Is there much difference between that and a head tax?

Mr. Koetz. Yes. We feel that there is a difference between that and a head tax. In other words, we are not necessarily charging the passengers directly for the tax, you know, boarding the plane or deplaning or anything like that. This tax is charged directly to the airlines.

Mr. Shoup. I think the problem we have here on the committee on the head tax is not the fact that revenues being raised for a very needed use, but the fact that we made these decisions some years ago that we would take a national view of it, not individual.

And it would seem to me that this type of tax does not differ from a head tax; that each State and each community, if we can justify Ohio's, would be able to add their own excise tax, which I can't see differs from a head tax.

Mr. Koetz. That is possibly true. What we would like to suggest is that possibly, since Ohio has already enacted this act, amendments be [p. 251] made that would allow the Ohio airline excise tax, but no expansion of any other State in the same area.

Mr. Dingell. Would the gentleman yield?

Mr. Shoup. I will yield on that; yes.

Mr. Dingell. That is for Ohio, but don't let anybody else do it?

Mr. Koetz. We are making the suggestion.

Mr. Dingell. Are you making it seriously?

Mr. Koetz. Yes.

Mr. Dingell. It is a rather curious suggestion.

Mr. Shoup. Somewhat selfish, too.

Mr. Koetz. But that is one of the fears of the airlines, of this being expanded to the other 49 States. No doubt about that.

Mr. Shoup. If this, you feel, is a fair tax and is supplying Ohio with needed revenue, then would you suggest that the committee take a look at this as a possible policy or legislation which would involve all 50 States?

Mr. Koetz. Yes. We have had a court test on this. It went to the U. S. Supreme Court, on the fairness and the equitable features in the tax and it has been upheld. It has been a long, continuing battle in Ohio to get this thing started and we have spent much time and effort in fighting defenses in court and things like that for the last 2 years. And we finally have resolved those problems in the courts. And now we are collecting the tax.

In other words, we are going in the direction, I would say.

Mr. Shoup. What is the control or use to which these taxes can be put? Do these go into the general fund?

Mr. Koetz. They go into the general revenue fund, but they are specifically earmarked for the widows and orphans and firemen and police pension funds.

Mr. Shoup. There is a similarity, then, to the Philadelphia case is it not, where the mayor said they were using it for retirement funds, for payment of wages?

Mr. Koetz. I am not sure of that.

Mr. Shoup. Theirs is a head tax.

That leads me to say that it appears as though this tax is approaching more and more a similarity to a head tax.

I think our problem in these bills is to find a way to assist local communities in finding an equitable means of financing their share of the operating costs. You tax the airlines to provide for retirement or widows and orphans of firemen and policemen; is that correct?

Mr. Koetz. That is correct.

Mr. Dixon. Wasn't the court resolution by a 4 to 3 decision?

Mr. Koetz. That is correct, 4 to 3.

Mr. Dixon. Will you call it a close question?

Mr. Koetz. Yes.

Mr. Shoup. Would you feel that the most recent court decision which stated specifically what head taxes could be used for, will have any effect on the decision that you have for Ohio?

Mr. Koetz. Not if we can make a distinction between our airlines' excise tax and the head tax.

Mr. Shoup. One final question, Mr. Chairman.

[p. 252] I was interested in your answer to Mr. Dingell's question, whether this was a gross receipts tax. I fail to understand why this is not a gross receipts tax.

Mr. Koetz. Well, we start off with the total gross receipts of the airline and then break them down only to the in and out of Ohio's portion.

Mr. Shoup. But it is based on the gross receipts?

Mr. Koetz. It is based on the gross receipts attributable to Ohio, origination-destination.

Mr. Dingell. If the gentleman will yield: then it is a gross receipts tax. It either is an excise tax or it is a gross receipts tax. And I do not think calling it an excise tax is going to make it; so, to be perfectly frank with you. This is either an excise tax or a gross receipts tax.

So really, you have a gross receipts tax, and the only difference between this and a regular gross receipts tax, for example, on an airline doing business, would be that you would simply say: "OK fellows, we are only going to charge you on that portion of the business which is done inside the State of Ohio."

But the Federal Constitution would prohibit you from levying a tax on business that is done outside the State of Ohio anyway.

Mr. Koetz. That is correct. We do have a gross receipts tax on railroads in Ohio, doing business in Ohio, too, and have had for several years.

Mr. Dingell. I thank my friend.

Mr. Shoup. I have no further questions, Mr. Chairman.

Mr. Jarman. Do I understand from your testimony that none of the revenue from this tax goes for aviation purposes?

Mr. Koetz. That is correct.

Mr. Jarman. Mr. Metcalfe.

Mr. Metcalfe. Thank you, Mr. Chairman.

I just need some clarification. When Congressman Dingell was asking the question and giving the examples of stopping over, or whether or not he terminated his trip in Ohio, you gave us a very definitive answer.

If he was terminated, of course, the tax would apply; but if he got off to stretch his legs it would not apply.

Then when Congressman Shoup asked the question: "A plane was flying over Ohio," as I understood it, "and was going to Hawaii;" did I hear you correctly that you would charge a portion of the amount of the tax?

Mr. Koetz. No; if a plane were just flying over Ohio we would have no nexus. There has to be some connection with Ohio. The passenger has to originate in Ohio, or his destination has to be Ohio.

But a plane, say, flying from New York over Ohio, going to Hawaii—there is absolutely no tax consequence there.

Mr. Metcalfe. Since the approximately $2 million that you collect every year is going for the benefit of widows and orphans of firemen and police, what source of revenue do you have to improve the facilities?

Or, assuming that you wanted to build a new runway or to pay for the new program of preventing air piracy, in order to establish [p. 253] security? What funds do you have for that, and where do you get those?

Mr. Koetz. Basically, those funds would be user fees that would be charged by the local airports, you know, for expansion. It would be between the airlines and the local airports. Revenue would be raised in that manner.

Mr. Metcalfe. So therefore there would be really two taxes inflicted? Is that right? The tax for that purpose of improving facilities of the airport, as well as for hiring personnel for security purposes to prevent air hijacking.

Mr. Koetz. I am not sure how the local airports are paying for the security, but I assume that it is coming out of the funds, whatever they are charging the various airlines in fees, landing fees, user fees.

Mr. Metcalfe. So, what is the difference between what they are charging the airlines for user fees, landing and the $2 million that is going into the orphans and widows fund, and the amount of money for the other that I mentioned?

Mr. Koetz. Well, the basic difference, as I see it, would be the specific use of that particular airport in landing and taking off; and there is a fee charged for each incident.

Mr. Metcalfe. Then I must include in that that a passenger is subject to two taxes: The excise tax as well as the other tax, in order to meet his expenses?

Mr. Koetz. Indirectly; yes.

Mr. Metcalfe. I have no further questions, Mr. Chairman.

Mr. Shoup. To summarize your testimony, then, you are not speaking on behalf of air travel or aviation. Your testimony is basically on what? Compassion for the widow and orphan in Ohio?

Mr. Koetz. Yes.

Mr. Metcalfe. Are there any other sources of funds for the widows and orphans of policemen and firemen in the State of Ohio?

Mr. Koetz. There are, out of each paycheck, out of the firemen and policemen in Ohio—the firemen or policemen contribute so much to the retirement pension fund and then the State makes a matching contribution.

In other words, most of the revenue is derived from that source.

Mr. Metcalfe. When you say the State makes an additional contribution, is that the money that we are talking about, as to excise tax, or would that be a separate fund?

Mr. Koetz. That would be a separate fund.

Mr. Jarman. If there are no further questions, we appreciate your being with us, gentlemen, to help complete the hearing record.

Mr. Koetz. Thank you, Mr. Chairman.

Mr. Jarman. The next witness this morning is Mr. John A. Nammack, executive vice president of the National Association of State Aviation Officials, with offices here in Washington.

[p. 259] . . . .

Statement of John A. Nammack, Executive Vice President, National Association of State Aviation Officials

. . . .

[p. 260] . . . .

## THE HEAD TAX ISSUE

**In testimony before this Committee last year, NASAO stated its opposition to proposed Congressional action which would impose a blanket prohibition on the right of**

the states and local authorities to assess and collect passenger service fees or "head taxes" on passengers enplaning at airports under their jurisdiction. At the same time, we recognized that such taxes should be reasonable and preferably uniform, and that the proceeds should be used for airport development purposes.

The states reiterate that position as a matter of principle more than as a basis of intended practice. It is worth noting that no state has passed "head tax" legislation since the Supreme Court handed down its decision in the Evansville New Hampshire case. The states did not take that decision as a green light to begin moving into passenger service charges. In fact, only one state made any attempt—and it was exploratory in nature—to pursue the possibility of imposing such fees, and as Mr. Dingell accurately stated during last week's hearings, the state's intention was to apply the revenue it collected to the development of airports included in the State airport system as well as to the further development of the airports where the charges were collected.

The chairman of the Air Transport Association last week alluded to legislation recently introduced in two states which would levy a 15% gross receipts tax on airline passenger ticket sales within one state and which would impose a 4% airlines excise tax on the carriers' gross receipts from ticket sales in the second state. It may interest this Committee to learn that in the first state, which is Oklahoma, the bill is being actively opposed by the Oklahoma Aeronautics Commission which learned about the legislation only last week. The second state was Hawaii, which happens to be one of only three states who are not presently members of NASAO. As a result, we can offer no comment on the destiny of that bill.

I can state categorically that we are aware of no other state actively pursuing "head tax" legislation at this time. Nor is it our intention to attempt to create a major obstacle with the "head tax" issue to impede the passage of the Chairman's bill which we support.

HOUSE OF REPRESENTATIVES

93d Congress
*1st Session*

Report
No. 93-157

# AIRPORT DEVELOPMENT ACCELERATION ACT OF 1973

April 19, 1973.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. Staggers, from the Committee on Interstate and Foreign Commerce, submitted the following

## REPORT

[To accompany H. R. 6388]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H. R. 6388) to amend the Airport and Airway Development Act of 1970 to increase the U. S. share of allowable project costs under such act; to amend the Federal Aviation Act of 1958 to prohibit certain State taxation of persons in air commerce; and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments, as they appear in the reported bill, are as follows:

(1) Page 2, immediately after line 5, insert the following:

"Sec. 3. Section 14 (b) of the Airport and Airway Development Act of 1970 (49 U. S. C. 1714 (b)) is amended—

"(1) by striking out "$840,000,000" in the first sentence thereof and inserting in lieu thereof "$1,400,000,000"; and

"(2) by striking out 'hand' in the last sentence thereof and inserting immediately before the period ', an aggregate amount exceeding $1,120,000,000 prior to June 30, 1974, and an aggregate amount exceeding $1,400,000,000 prior to June 30, 1975'."

(2) Page 2, line 17, strike out "Sec. 3." and insert in lieu thereof "Sec. 4.".

(3) Page 2, line 21, strike out "Sec. 4." and insert in lieu thereof "Sec. 5.".

(4) Page 3, strike out lines 6 through 13 and insert in lieu thereof the following:

"(1) 50 per centum for the sponsor of any airport which enplanes not less than 1 per centum of the total annual passengers enplaned by air carriers certificated by the Civil Aeronautics Board; and

[p. 2] "(2) 75 per centum for the sponsor of any airport which enplanes less than 1 per centum of the total annual passengers enplaned by air carriers certificated by the Civil Aeronautics Board"; and

(5) Page 4, line 16, strike out "Sec. 5." and insert in lieu thereof "Sec. 6.".

(6) Page 4, line 20, strike out "Sec. 6." and insert in lieu thereof "Sec. 7.".

(7) Page 5, lines 17 and 18, strike out "July 1, 1973." and insert in lieu thereof "December 31, 1973.".

(8) Page 6, line 22, strike out "July 1, 1973" and insert in lieu thereof "December 31, 1973".

COMMITTEE AMENDMENTS

. . . .

Third, committee amendments numbered (7) and (8) extend from July 1, 1973, to December 31, 1973, the period of time within which certain State or local taxing authorities which have been levying and collecting airline passen-

ger head taxes will be exempt from the prohibition against such taxes provided by the reported bill.

The remainder of the committee amendments merely make technical changes in the section numbers of the reported bill to reflect the addition of the new section 3.

## PURPOSE

H. R. 6388 amends the Airport and Airway Development Act of 1970 and the Federal Aviation Act of 1958 in order to increase federal financial assistance for airport development throughout the United States. It also prohibits the levying and collecting, by State and local governments, of passenger use taxes ("head taxes") on persons traveling in air commerce or on the sale of air transportation.

The legislation to provide increased U. S. participation in airport development grants is required because of the serious financial difficulties being experienced by many local governmental agencies who bear [p. 3] the responsibility to build, operate, and maintain the Nation's system of publicly owned airports. The increased share of Federal funds provided by the legislation will come from the Airport and Airway Trust Fund established by the Airport and Airway Revenue Act of 1970, and since all such funds come from revenues from user taxes on aviation system users, no new expenditures of general Federal funds will be required as a result of this legislation.

H. R. 6388 prohibits the so-called "head tax" by any governmental agency other than the United States, on the carriage of persons in air transportation. This prohibition will ensure that passengers and air carriers will be taxed at a uniform rate by the Federal Government, and will not be subject to the various user taxes being levied in a number of jurisdictions across the country.

## HEARINGS

The Subcommittee on Transportation and Aeronautics held hearings on H. R. 4082, H. R. 2695, H. R. 627,

H. R. 1784, H. R. 4182, H. R. 4213, H. R. 4214, and S. 38 on March 14, 15, 20, 22, and 27, 1973.

Witnesses representing virtually all segments of air transportation and the federal agencies which regulate the Nation's air system testified. The Subcommittee was afforded a wide range of contrasting views on the major provisions of the legislation, including the head tax provision and legislation increasing expenditures from the Trust Fund for airport development.

## COMMITTEE ACTION

On March 28, 1973, the Subcommittee on Transportation and Aeronautics considered the various legislative proposals included in the hearing record and decided to report a clean bill, H. R. 6388, which utilized the language of H. R. 4082, but amended it to reduce the minimum annual authorizations for each of the fiscal years 1974 and 1975 from $350 million to $280 million. The Subcommittee action was unanimous.

On April 11, 1973, the Committee on Interstate and Foreign Commerce considered H. R. 6388 and reported favorably by voice vote with seven amendments.

## BACKGROUND AND NEED

The 91st Congress, in response to sharply increasing airport and airspace congestion, created a federal aviation trust fund (Airport and Airway Revenue Act of 1970), in order to increase Federal participation in the expansion, development and modernization of public airports throughout the nation. The primary money resources for the fund is derived from an 8 percent excise tax on domestic tickets.

Prior to 1970, Federal participation in airport construction, maintenance and development was severely handicapped by budgetary restrictions, since funds were appropriated entirely from general revenues. This situation resulted in the Federal Government turning down

or postponing local and State programs even where the local or State funding was provided for because the Federal share was not available.

[p. 4] Three years after passage of the Act the situation has changed dramatically in many locations. Many State and local government agencies are hard pressed to raise their share of the funds required to match the Federal project grant.

More than forty State and local governmental agencies have enacted a passenger user tax, the so-called "head tax", in an effort to generate new revenue. On April 19, 1972, the $1.00 "use and service charge" levied by the airport authority in Evansville, Indiana, and the $1.00 per passenger service charge on passengers enplaning at New Hampshire's five publicly owned airports (for aircraft of 12,500 lbs. or less, the charge is 50 cents per passenger) were upheld by the U. S. Supreme Court [Table listing forty-four jurisdictions with head taxes is omitted.]

Congress never intended for local and State agencies to raise money for airports by the use of such taxes. The Committee feels that the head tax is an unnecessary burden on interstate commerce, that it is discriminatory, and that it has a stifling affect on air transportation.

During the second session of the 92d Congress, this Committee considered in depth the related problem of the inability of many local and State governmental units to raise the necessary resources to match Federal grants for airport improvement projects, as well as the problem created by the so-called head tax.

[p. 5] At the time these matters were being considered, only seventeen jurisdictions had enacted the passenger user taxes in 1972. Testimony presented to the Subcommittee on Transportation and Aeronautics during the March 1973 hearings indicated that the number of jurisdictions levying the head tax had mushroomed to 44.

The Committee believes the burgeoning numbers of localities using the head tax as a means of raising revenue

necessitates an immediate and clear action on the part of Congress if it is to maintain the integrity of air transportation in the United States. The Committee rejected the proposals for a moratorium on such passenger fees, and believes, in light of the U. S. Supreme Court decision on April 19, 1972 (*Evansville-Vanderburgh Airport Authority District, et al. v. Delta Airlines, Inc., et al; Northeast Airlines, Inc., et al v. New Hampshire Aeronautics Commission, et al.*), that a complete and permanent prohibition of such taxes must be statutory.

This Committee reported legislation (H. R. 14847) on July 26, 1972 which would have authorized the Civil Aeronautics Board to conduct a one-year study to determine the financial needs at airports which are funded in whole or in part at a State or local level. In order to give the Congress time to review such investigation and 18-month moratorium on the so-called head taxes was passed. The House passed H. R. 14847 with amendments on August 18, 1972.

The Senate Commerce Committee reported a different measure on August 1, 1972, and it passed the Senate on August 10, 1972. (S. 3755).

The conferees met and agreed to a compromise in October 1972.

The President pocket vetoed the legislation on October 27, 1972.

The legislation which this Committee has approved (H. R. 6388) is essentially the same bill as S. 3755), which both the House and Senate agreed to late last year.

The major difference between S. 3755 and H. R. 6388 is that the minimum annual authorization has not been increased in H. R. 6388. The Committee merely extends for fiscal years 1974 and 1975 the minimum annual authorization at the same level as in the first three fiscal years covered by P. L. 91-258, i. e., $280 million.

The Committee feels that by leaving the minimum annual authorization figure at FY 1971-1972-1973 levels, it

meets the objections raised by the administration in regard to their budget plans. The Committee stresses that these monies are to be derived from the Airport and Airway Trust Fund and not the general revenues.

The Committee has also extended an exemption until December 31, 1973 for several airports using the head tax. States levying and collecting the head tax before May 21, 1970 (the date the Airport and Airway Development Act of 1970 became law) are exempt from the prohibition until December 31, 1973, as are operating authorities which have an outstanding loan for airport improvement, have collected a passenger user tax without carrier assistance and have no authority to collect any other type of tax to repay the loan.

. . . .

[p. 10]

STATE TAXATION OF AIR COMMERCE

Section 7 amends title XI of the Federal Aviation Act of 1958 by adding a new section 1113 providing for a permanent prohibition against the levy or collection of a tax or other charge on persons traveling in air commerce or on the carriage of persons so traveling or on the sale of air transportation or the gross receipts derived therefrom by any State or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, territories or possessions of the United States, or political agencies of two or more States. There are two exemptions from this prohibition. First, any State which levied and collected such charges before May 21, 1970, is exempt from the prohibition until December 31, 1973. Second, any airport operating authority which—

(1) has an outstanding obligation to repay money borrowed and expended for airport improvements,

(2) has collected, without carrier assistance, a head tax on air passengers for the use of its facilities, and

(3) has no authority to collect any other type of tax to repay the loan,

is exempt from the prohibition until December 31, 1973. The new section 1113 also provides that the prohibition does not extend to the levy or collection of other taxes, such as property taxes, net income taxes, franchise taxes, and sales or use taxes, nor to the levy or collection of other charges such as reasonable rental charges, landing fees, and other service charges from aircraft operators for the use of airport facilities. The table of contents contained in the first section of the Federal Aviation Act of 1958 is amended to reflect the addition of the new section 1113 discussed above.

**119 CONG. REC. 13,896-13,911 (MAY 2, 1973).**

---

AIRPORT DEVELOPMENT ACCELERATION OF 1973

Mr. LONG of Louisiana. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 370 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 370

*Resolved,* That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H. R. 6388) to amend the Airport and Airway Development Act of 1970 to increase the United States share of allowable project costs under such Act; to amend the Federal Aviation Act of 1958 to prohibit certain State taxation of persons in air commerce; and for other purposes. . . . After the passage of H. R. 6388, the Committee on Interstate and Foreign Commerce shall be discharged from the further consideration of the bill S. 38, and it shall then be in order in the House to move to strike out all after the enacting clause of the said Senate bill and insert in lieu thereof the provisions contained in H. R. 6388 as passed by the House.

. . . .

Mr. LONG of Louisiana. . . .

. . . .

H. R. 6388 also prohibits the levying and collecting, by State and local governments, of passenger use taxes—commonly known as "head taxes"—on persons traveling in air commerce.

Mr. Speaker, this legislation is needed because of the serious financial difficulties now being experienced by many local governmental agencies who bear the responsi-

bility to build, operate and maintain our system of publicly owned airports. I urge the adoption of House Resolution 370 in order that we may discuss and debate H. R. 6388 (*Id.* at 13,897).

Mr. DEL CLAWSON. . . .

. . . .

The primary purposes of H. R. 6388 are to increase Federal financial assistance for airport development and to prohibit State and local governments from collecting airport head taxes on passengers.

In the 92d Congress the House passed a bill providing an 18-month moratorium on head taxes and a study of airport needs. The Senate passed a different version. The conference report was agreed to near the end of the session, and on October 27, 1972, the President vetoed the bill S. 3755 for budgetary reasons. (*Id.*).

. . . .

H. R. 6388 also provides a permanent prohibition against the levy and collection of local and State airport head taxes. However, many State and local taxing authorities which have been collecting airport head taxes will be exempt from this prohibition until December 31, 1973. (*Id.*).

. . . .

Mr. KUYKENDALL. . . .

. . . .

In the 93d Congress it was the feeling within our Subcommittee on Transportation that a bill tracking the previous bill but with an acceptable obligation figure should have the best chance of making the grade. Apparently the feeling had also grown that head taxes should be prohibited without further study.

The committee brings to you a bill which will prohibit the imposition of head taxes or gross receipts taxes by airport operators or States. There are some slight adjustments for communities which have made commitments or which started collecting taxes prior to the original congressional action. These are tailored to the specific situations and are of very short duration, ending at the end of 1973.

Recognizing the almost universal need for greater revenue if airports are to be built, and as some compensation for the loss of the potential revenue from head taxes, the bill provides an increase in the Federal share of airport projects. (*Id.* at 13,899).

. . . .

Mr. JARMAN. . . .

. . . .

Perhaps one of the most controversial aspects of the legislation last year was the feature dealing with passenger user taxes imposed by different jurisdictions across the country. When we considered this legislation last fall, only 17 jurisdictions utilized the so-called head tax. Today, there are 44 such taxes, and many other jurisdictions have planned to impose such a fee. This matter has been litigated in the courts. In April of last year, the Supreme Court of the United States upheld the constitutionality of the New Hampshire and Evansville, Ind., head taxes, stating that until Congress adopted a position on the matter, such taxes could be imposed by local jurisdictions.

The Interstate and Foreign Commerce Committee feels that the head tax is discriminatory and constitutes a burden on our national transportation system. The taxes vary from jurisdiction to jurisdiction, with no regard to the length of the journey of the passenger. The passenger is already paying an 8 percent Federal tax on his ticket in order to finance the airport and airway trust fund. (*Id.* at 13,900).

. . . .

Mr. BINGHAM. . . .

. . . .

This legislation also contains provisions that would prevent State and local governments from obtaining their matching funds for airport development through the use of "head taxes" on airline passengers. The Federal airport trust fund itself, of course, consists of proceeds from user taxes. So, in effect, this legislation endorses and perpetuates user taxes in the aviation field by the Federal Government, but prohibits them as a revenue device for State and local governments. This is an inconsistency which seems to me unfair to State and local governments. If anything, the formula should be reversed. It is the State and local governments that are hardest pressed for sources of revenue and should thus be given maximum flexibility for raising specific revenues for specific purposes. It is the Federal Government, on the other hand, that has the greater revenue-sharing capability and the responsibility for setting broad funding priorities, arguing for use of general revenues rather than earmarked user taxes for Federal aid to airports.

Finally, Mr. Chairman, this legislation is discriminatory toward larger, primarily urban airports. The legislation proposes to increase the ratio of Federal to local funds to 75-25 for smaller airports, but would retain only 50-50 funding for the larger urban "hub" airports. The stated reason for this discrimination is that the larger airports have greater access to local funding. Yet the bill would remove one of the major means of raising local matching revenues employed by many larger airports—the airline passenger head tax. I see no justification for imposing this kind of inequity upon the larger airports. (*Id.* at 13,903).

. . . .

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

. . . .

"STATE TAXATION OF AIR COMMERCE

"Sec. 1113. (a) No State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) shall levy or collect a tax, fee, head charge, or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom; except that any State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) which levied and collected a tax, fee, head charge, or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom prior to May 21, 1970, shall be exempt from the provisions of this subsection until July 1, 1973.

"(b) Nothing in this section shall prohibit a State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) from the levy or collection of taxes other than those enumerated in subsection (a) of this section, including property taxes, net income taxes, franchise taxes, and sales or use taxes on the sale of goods or services; and nothing in this section shall prohibit a State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) owning or operating an

airport from levying or collecting reasonable rental charges, landing fees, and other service charges from aircraft operators for the use of airport facilities.

"(c) In the case of any airport operating authority which—

"(1) has an outstanding obligation to repay a loan or loans of amounts borrowed and expended for airport improvements;

"(2) is collecting without air carrier assistance, a head tax on passengers in air transportation for the use of its facilities; and

"(3) has no authority to collect any other type of tax to repay such loan or loans,

the provisions of subsection (a) shall not apply to such authority until July 1, 1973." (*Id.* at 13,904).

. . . .

Mr. ADAMS. Mr. Chairman, I certainly regret having to oppose the amendment of my very good friends from cities which have this head tax. I must oppose it, however. This bill was carefully tailored to exempt from the head tax until the end of the year only those two cities which had gone to the Supreme Court and had received authorization for the tax and had started collecting it before the Congress had actuall moved to work on and prohibit the head tax.

The rest of the cities came in, in the face of the fact that the Senate and the House were working on it. As the Members will remember, the anti-head-tax bill was passed by this body the last time, and was also passed by the Senate, but was later pocket-vetoed by the President for reasons which had nothing to do with the head tax, but had to do with the granting of money out of the trust fund to these cities to make up for the moneys which they were receiving from the head tax.

The head tax is a very onerous thing. On page 4 of the report, the Members will see that there are now 44 cities with this tax. This is what we warned Members of the House about the last time, both at the time of the conference and at the time of the passage of the bill, that if we did not pass the bill promptly a number of cities would lay on this tax.

That is precisely what has happened. Those that have the tax on now put it on knowing full well that it was a tax in jeopardy. (*Id.* at 13,905).

. . . .

Mr. KUYKENDALL. Mr. Chairman, I rise in opposition to the amendment.

I should like to concur in the remarks of the gentleman from Washington (Mr. Adams) and to point out that both the Senate and the House have acted and passed legislation. The Senate acted first last year, I believe. In the case of the Senate, they absolutely banned the head tax. In the case of the House, it was an 18 months suspension.

The operators, the Airport Operators Council here in Washington, knew full well that legislation had passed both Houses though the veto came rather late in the year. The Airport Operators Council asked me, and my own local airport people asked me, "Do you expect the bill to be reintroduced?" I said, "Certainly. Yes."

They had a warning that the bill banning head taxes would be reintroduced.

Surely they had the right to do whatever they did, but they can hardly plead ignorance in this case..

I am opposed to the amendment. (*Id.* at 13,906).

. . . .

Mr. DINGELL. . . .

. . . .

But in addition to this, it must be recognized that head taxes are not limited as to amount, and they have grown from a very nominal figure, something like 50 cents per head, to something on the order of $2 or $4, and I think that the magnitude of growth under this set of circumstances is something which should well be borne in mind by the membership of this body.

. . . .

Mr. Chairman, there is something else I think the membership ought to know, and that is the rapid increase in the number of communities which levy head taxes at their airports. It started out with two; at the time the bill was passed last year the number had grown to 17; today the number is 44. Under the amendment which is before us, any community in the country could levy a head tax in any amount for any purposes. The amendment does not limit either the amount, nor does it limit the purposes for which a head tax might be imposed by the community, and my colleagues should bear that thought well in mind in considering the legislation before us. (*Id.* at 13,907).

. . . .

Mr. DINGELL. Under the amendment that is before us, and under the existing practice, if I were going from point A to point B by way of point C, which would be the transferring point, I could be charged a head tax at point A, a head tax when I got off the plane at point C, a head tax when I got back on at point C, and a head tax when I got off the plane finally at point B. (*Id.*).

. . . .

Mr. JARMAN. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, the only thing I would add to the argument that has been presented so far is that I believe the House should bear in mind that this body and the other

body acted in August of last year on this subject declaring its clear intent against the continuation of head taxes. Other cities then came in and levied head taxes when the intent of the Congress was very clear against this practice. I think there was every reason for the cities to know that the Congress would take action to prohibit these taxes. (*Id.* at 13,908).

. . . .

Mr. KUYKENDALL. . . .

. . . .

What we are doing is putting a premium on people who went ahead with the head tax even though they knew that Congress was in the process of holding hearings and would presently pass legislation against such a practice. We would be penalizing the cities who asked us for recommendations and used discretion in delaying such action. (*Id.*).

. . . .

Mr. KUYKENDALL. Mr. Chairman, may I point out that the Supreme Court decision said that such taxes may be passed if they are used only for airport purposes.

And a city that is going to be unnamed is clearly using these funds for general revenues. That is unconscionable. (*Id.*).

. . . .

The CHAIRMAN. The question is on the amendment offered by the gentleman from New Hampshire (Mr. WYMAN).

The amendment was rejected. (*Id.* at 13,908).

. . . .

Mr. WYMAN. Mr, Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Wyman: Page 4, strike out line 20 and all that follows down through Page 7, line 3 and the matter that follows line 3.

Mr. WYMAN. Mr. Chairman, my amendment would strike out language in H. R. 6388 which would prohibit collection of State and local airport head taxes. This is a matter of urgency for the Nation's 2,400 small air terminals not served by certified air carriers.

Such airports find it extremely difficult, if not impossible, to compete for available funds to take advantage of Federal matching grants without the airline landing fees and space rental revenues available to the larger hub airports. As a result, vitally needed improvements—including long overdue modernization of safety facilities—have had to be deferred. (*Id.*).

. . . .

Mr. JARMAN. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I think most of the arguments have been made on this subject. If the House will refer to page 4 of the committee report, there is an indication of what the trend is: 44 cities levying this type tax.

I hope the House will bear in mind in voting on this amendment that the Congress itself established a uniform national program for the funding of aviation needs. Bear in mind that we now have an 8-percent charge on domestic passengers and a $3 per person charge on international travelers.

There is no question that the head taxes levied by the cities have made for confusion and resentment on the part of travelers. It is essential that we maintain a uniform national system. (*Id.* at 13,909).

. . . .

Mr. DOWNING. Mr. Chairman, I demand a recorded vote.

A recorded vote was refused.

So the amendment was rejected. (*Id.*).

. . . .

The SPEAKER. Pursuant to the provisions of House Resolution 370, the Committee on Interstate and Foreign Commerce is discharged from the further consideration of the bill, S. 38, to amend the Airport and Airway Development Act of 1970, as amended, to increase the U. S. share of allowable project costs under such act, to amend the Federal Aviation Act of 1958, as amended, to prohibit certain State taxation of persons in air commerce, and for other purposes.

The Clerk read the title of the Senate bill.

Motion Offered By Mr. Staggers

Mr. STAGGERS. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. STAGGERS moves to strike out all after the enacting clause of the bill S. 38 and insert in lieu thereof the provisions of H. R. 6388, as passed, as follows: (*Id.* at 13,910).

. . . .

"STATE TAXATION OF AIR COMMERCE

"Sec. 1113. (a) No State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) shall levy or collect a tax, fee, head charge, or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom;

except that any State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) which levied and collected a tax, fee, head charge, or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom prior to May 21, 1970, shall be exempt from the provisions of this subsection until December 31, 1973.

"(b) Nothing in this section shall prohibit a State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) from the levy or collection of taxes other than those enumerated in subsection (a) of this section, including property taxes, net income taxes, franchise taxes, and sales or use taxes on the sale of goods or services; and nothing in this section shall prohibit a state (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) owning or operating an airport from levying or collecting reasonable rental charges, landing fees, and other service charges from aircraft operators for the use of airport facilities.

"(c) In the case of any airport operating authority which—

"(1) has an outstanding obligation to repay a loan or loans of amounts borrowed and expended for airport improvements;

"(2) is collecting without air carrier assistance, a head tax on passengers in air transportation for the use of its facilities; and

"(3) has no authority to collect any other type of tax to repay such loan or loans.

the provisions of subsection (a) shall not apply to such authority until December 31, 1973." (*Id.*).

. . . .

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

A motion to reconsider was laid on the table.

A similar House bill (H. R. 6388) was laid on the table. (*Id.*).

---

**119 CONG. REC. 14,662-63 (MAY 8, 1973).**

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. CANNON, I move that the Senate disagree to the amendment of the House on S. 38 and ask for a conference with the House on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed to Mr. MAGNUSON, Mr. CANNON, Mr. HART, Mr. COTTON, and Mr. PEARSON conferees on the part of the Senate. (*Id.* at 16,663).

---

HOUSE OF REPRESENTATIVES

93d Congress
*1st Session*

No. 93-225

# AIRPORT DEVELOPMENT ACCELERATION ACT OF 1973

May 24, 1973.—Ordered to be printed

Mr. STAGGERS, from the committee of conference, Submitted the following

## CONFERENCE REPORT

[To accompany S. 38]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 38) to amend the Airport and Airway Development Act of 1970, as amended, to increase the U. S. share of allowable project costs under such Act, to amend the Federal Aviation Act of 1958, as amended, to prohibit certain State taxation of persons in air commerce, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

*That this Act may be cited as the "Airport Development Acceleration Act of 1973".*

. . . .

[p. 3] . . . .

*"STATE TAXATION OF AIR COMMERCE*

*"Sec. 1113. (a) No State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) shall levy or collect a tax, fee, head charge, or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom: except that any State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) which levied a tax, fee, head charge, or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom prior to May 21, 1970, shall be exempt from the provisions of this subsection until December 31, 1973.*

*"(b) Nothing in this section shall prohibit a State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) from the levy or collection of taxes other than those enumerated in subsection (a) of this section, including property taxes, net income taxes, franchise taxes, and sales or use taxes on the sale of goods or services; and nothing in this section shall prohibit a State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) owning or operating an airport from levying or collecting reasonable rental charges, landing fees, and other service charges from aircraft operators for the use of airport facilities.*

*"(c) In the case of any airport operating authority which—*

*"(1) has an outstanding obligation to repay a loan or loans of amounts borrowed and expended for airport improvements;*

*"(2) is collecting without air carrier assistance, a head tax on passengers in air transportation for the use of its facilities; and*

*"(3) has no authority to collect any other type of tax to repay such loan or loans,*

*the provisions of subsection (a) shall not apply to such authority until December 31, 1973.".*

*(b) That portion of the table of contents contained in the first section of such Act which appears under the center heading*

. . . .

[p. 5]

## JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill S. 38 to amend the Airport and Airway Development Act of 1970, as amended, to increase the United States share of allowable project costs under such Act, to amend the Federal Aviation Act of 1958, as amended, to prohibit certain State taxation of persons in air commerce, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report.

The House amendment struck out all of the Senate bill after the enacting clause and inserted a substitute text and the Senate disagreed to the House amendment.

The committee of conference recommends that the Senate recede from its disagreement to the amendment of

the House, with an amendment which is a substitute for both the Senate bill and the House amendment.

The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below.

Unless otherwise indicated, references to provisions of "existing law" contained in this joint statement refer to provisions of the Airport and Airway Development Act of 1970.

## STATE TAXATION OF AIR COMMERCE

*Senate bill*

Section 7 of the Senate bill provided for a permanent prohibition against the levy or collection of a tax or other charge on persons traveling in air commerce, or on the carriage of persons so traveling, or on the sale of air transportation or on the gross receipts derived therefrom, by any State or political subdivision thereof (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States, or political agencies of two or more States). There were two exemptions from this prohibition.

First, any State which levied such charges before May 21, 1970, would be exempt from the prohibition until *July 1, 1973.*

Second, any airport operating authority which (1) has an outstanding obligation to repay money borrowed and expended for airport improvements, (2) has collected a head tax on air passengers, without carrier assistance, for the use of its facilities, and (3) has no authority to collect any other type of tax to repay the loan, would be exempt from the prohibition until *July 1, 1973.*

[p. 6] The Senate bill also provided that the prohibition would not extend to the levy or collection of other taxes, such as property taxes, net income taxes, franchise

taxes, and sales or use taxes, nor to the levy or collection of other charges such as reasonable rental charges, landing fees, and other service charges from aircraft operators for the use of airport facilities.

*House amendment*

The House amendment was substantially the same as the Senate bill, except that the exemptions from the prohibition against the levy and collection of the so-called airline passenger head taxes was extended from July 1, 1973, to December 31, 1973, and the exemption with respect to jurisdictions which impose such charges before May 21, 1970, was limited to those which *levied* and *collected* such charges rather than those which merely *levied* such charges.

*Conference substitute*

The conference substitute follows the House amendment in extending to December 31, 1973, the exemptions from the prohibition against the levy and collection of the so-called airline passenger head taxes and follows the Senate bill in extending the exemptions to jurisdictions which *levied* such taxes before May 21, 1970, rather than limiting the exemptions to those which *levied and collected* such taxes before such date.

**119 CONG. REC. 16,891-93 (MAY 24, 1973).**

## CONFERENCE REPORT ON S. 38, AIRPORT DEVELOPMENT ACCELERATION ACT OF 1973

Mr. STAGGERS submitted the following conference report and statement on the bill (S. 38) to amend the Airport and Airway Development Act of 1970, as amended, to increase the U.S. share of allowable project costs under such act, to amend the Federal Aviation Act of 1958, as amended, to prohibit certain State taxation of persons in air commerce, and for other purposes:

Conference Report (H. Rept. No. 93-225) [the text of H. Rept. No. 93-225 is reproduced here in the Congressional Record].

. . . .

### STATE TAXATION OF AIR COMMERCE

#### Senate Bill

Section 7 of the Senate bill provided for a permanent prohibition against the levy or collection of a tax or other charge on persons traveling in air commerce, or on the carriage of persons so traveling, or on the sale of air transportation or on the gross receipts derived therefrom, by any State or political subdivision thereof (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States, or political agencies of two or more States). There were two exemptions from this prohibition.

First, any State which levied such charges before May 21, 1970, would be exempt from the prohibition until *July 1, 1973.*

Second, any airport operating authority which (1) has an outstanding obligation to repay money borrowed and expended for airport improvements, (2) has collected a head tax on air passengers, without carrier assistance, for the use of its facilities, and (3) has no authority to collect

any other type of tax to repay the loan, would be exempt from the prohibition until *July 1, 1973.*

The Senate bill also provided that the prohibition would not extend to the levy or collection of other taxes, such as property taxes, net income taxes, franchise taxes, and sales or use taxes, nor to the levy or collection of other charges such as reasonable rental charges, landing fees, and other service charges from aircraft operators for the use of airport facilities.

House Amendment

The House amendment was substantially the same as the Senate bill, except that the exemptions from the prohibition against the levy and collection of the so-called airline passenger head taxes was extended from July 1, 1973, to December 31, 1973, and the exemption with respect to jurisdictions which impose such charges before May 21, 1970, was limited to those which *levied and collected* such charges rather than those which merely *levied* such charges.

Conference Substitute

The conference substitute follows the House amendment in extending to December 31, 1973, the exemptions from the prohibition against the levy and collection of the so-called airline passenger head taxes, and follows the Senate bill in extending the exemptions to jurisdictions which *levied* such taxes before May 21, 1970, rather than limiting the exemptions to those which *levied and collected* such taxes before such date.

---

**119 CONG. REC. 17,344 (MAY 30, 1973).**

Mr. STAGGERS. Mr. Speaker, the House and Senate conferees have approved a compromise version of the Airport Development Acceleration Act of 1973 which, in my opinion, follows closely the version this House passed by a vote of 386 to 16 on May 2.

The main purpose of this bill, as the Members recall, is to ban the so-called airport head tax. We had seven of these taxes when we considered this legislation last year. This year we have 44.

The House and Senate had six points of disagreement when we each passed our separate legislation.

. . . .

Sixth. The conferees exempt three localities from the ban on head tax through the end of this year. We compromised on allowing Evansville, Ind., to be exempt. The Senate compromised by using our language to ban all head taxes after July 1 of this year except for three jurisdictions which are exempt through the end of the year.

. . . .

Mr. DEVINE. Mr. Speaker, I rise in support of the conference agreement on S. 38, the Airport Development Acceleration Act of 1973.

The House amendment to S. 38 was passed by this body by an overwhelming vote of 386 to 16 on May 2. The purpose of the bill was twofold—to prohibit the imposition of head taxes or gross receipts taxes by airport operators or States, and at the same time to increase the Federal share of funding for airport projects in medium hub and smaller cities to alleviate the problems that these cities have had in coming up with the local share.

---

**119 CONG. REC. 18,045 (JUNE 5, 1973).**

Mr. CANNON. Mr. President, I submit a report of the committee of conference on S. 38, and ask for its immediate consideration.

. . . .

(The conference report is printed in the House proceedings of the Congressional Record of May 24, 1973, at page 16891.)

. . . .

. . . Finally, our bill prohibits discriminatory State and local taxation on airline passengers and on the gross receipts derived from air transportation.

. . . .

[The joint explanatory statement from the Conference Committee report is reproduced here in the Congressional Record.]